Apl. 20 - Portland -

affirmed - Davis

Supreme Court of the United States.

No. 420

JOSEFA de HARO Et Al.,

Appellants,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRIAT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA.

TRANSCRIPT AND RECORD.

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Office of the Board of Commissioners

To ascertain and settle the Private Land Claims in the State of Cal'a.

Be it Remembered, That on this tenth day of March, Anno Domini one thousand eight hundred and fifty-two, before the Commissioners, to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Josefa de Haro, et als., for the place named Potrero de San Francisco was presented, and ordered to be filed and docketed with No. 101, and is as follows, to wit: (Vide page 9 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

San Francisco, March 30, 1853.

In case No. 101, Josefa de Haro, et als.,for the place named "Potrero de San Francisco," the deposition of Wm. H. Richardson, a witness in behalf of the claimants, taken before Commissioner Henry J. Thornton, with documents marked H. J. T., No. 1, and translation thereof, annexed thereto, was filed. (Vide page 11 of this Transcript.)

San Francisco, July 11, 1853.

Case No. 101. on motion of Clark, Taylor and Beckh, was ordered to be placed on the motion docket.

San Francisco, October 21, 1853.

In the same case the deposition of Francisco Arce and Com. R. Richardson, witnesses in behalf of the claimants, taken before Commissioner Thompson Campbell, were filed. (Vide pages 13 and 21 of this Transcript.)

San Francisco, October 28, 1853.

In the same case the deposition of David Spence, a witness in behalf of the United States, taken before Commissioner Alpheus Felch, was filed. (Vide page 14 of this Transcript.)

San Francisco, December 16, 1853.

In the same case the deposition of Julius K. Rose, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, was filed. (Vide page 16 of this Transcript.)

San Francisco, March 2, 1854.

In the same case the deposition of Henry F. Fenhemaker, Jacob P. Leese, Francisco Sanchez and Abel Stearns, witnesses in behalf of the claimants, taken before Commissioner Thompson Campbell, were filed. (Vide pages 22, 27, 29 and 31 of this Transcript.)

San Francisco, March 7, 1854.

In the same case the deposition of Thomas O. Larkin, a witness in behalf of the claimants, taken before Commissioner R. Aug. Thompson, was filed. (Vide page 32 of this Transcript.)

San Francisco, March 9, 1854.

In the same case the deposition of Carmen S. de Bernal, a witness in behalf of the claimants, taken before Commissioner R. Aug. Thompson, was filed. (Vide page 39 of this Transcript.)

SAN FRANCISCO, March 14, 1854.

In the same case the counsel for the claimant filed the following amended petition, to wit: (Vide page 183.)

And the prayer of the petitioners therein was taken under advisement.

SAN FRANCISCO, March 18, 1854.

In the same case the deposition of Manuel Castro and Gregorio Brunes, witnesses in behalf of the claimants, taken before Commissioner R. Aug. Thompson, were filed. (Vide pages 45 and 52 of this Transcript.)

SAN FRANCISCO, March 21, 1854.

In the same case the United States Law Agent filed the following notice, to wit: (Vide page 189 of this Transcript.)

Which motion was taken under advisement by the Board.

SAN FRANCISCO, March 30, 1854.

In the same case the deposition of Juan Padilla, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed. (Vide page 63 of this Transcript.)

SAN FRANCISCO, April 25, 1854.

In the same case Commissioner Alpheus Felch delivered the decision of the Board upon the motion of the United States Law Agent, filed heretofore, to wit: on the 21st March, 1854, asking to strike from the file of said case the paper attached to the deposition of Abel Stearns, overruling the motion.

In the same case Commissioner Alpheus Felch delivered the decision of the Board upon the motion of the claimants, filed heretofore, to wit: on the 14th March last, asking leave to amend the petition, overruling said motion.

SAN FRANCISCO, April 27, 1854.

In the same case the deposition of Samuel R. Throckmorton, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed. (Vide page 73 of this Transcript.)

SAN FRANCISCO, May 2, 1854.

Case No. 101 was ordered, on motion of the counsel for the claimants, to be placed at the foot of the first class cases on the trial docket.

SAN FRANCISCO, May 16, 1854.

In the same case the counsel for the claimants filed the affidavits of Ramon de Zaldo, George R. Glidden and E. L. Beard, which are as follows, to wit: (Vide pages 175, 179 and 181 of this Transcript.)

Also the following annexed petition, to wit: (Vide page 185 of this Transcript.)

Which affidavits and petition were taken under advisement by the Board.

SAN FRANCISCO, June 13, 1854.

In the same case Commissioner Alpheus Felch delivered the decision of the Board upon the motion of the counsel for the claimants, filed heretofore, to wit: on the 16th May last, asking leave to fill an amended petition, granting said motion.

Whereupon the Law Agent filed the following exception, to wit: (Vide page 186 of this Transcript.)

SAN FRANCISCO, June 20, 1854.

In the same case the United States Law Agent filed a motion sustained by his affidavit, asking the Board to grant an order for attaching the person of George R. Glidden, who was duly subpœnaed as a witness in behalf of the United States, and failed to appear.

SAN FRANCISCO, June 23, 1854.

In the same case the deposition of George R. Glidden, a witness in behalf of the

United States, taken before Commissioner Alpheus Felch, was filed. (Vide page 80 of this Transcript.)

SAN FRANCISCO, July 3, 1854.

In the same case the deposition of Charles V. Stuart and Frederick P. Tracy, witnesses in behalf of the United States, taken before Commissioner Peter Lott, were filed. (Vide pages 83 and 93 of this Transcript.)

SAN FRANCISCO, July 5, 1854.

In the same case the deposition of John H. Davis and Charles Rideout, witnesses in behalf of the United States, taken before Commissioner Peter Lott, were filed. (Vide pages 101 and 107 of this Transcript.)

In the same case the deposition of John A. Sutter, a witness in behalf of the claimants, taken before Commissioner Peter Lott, was filed. (Vide page 115 of this Transcript.)

SAN FRANCISCO, July 6, 1854.

In the same case the deposition of Antonio Bujan, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed. (Vide page 111 of this Transcript.)

SAN FRANCISCO, July 10, 1854.

In the same case the deposition of David Whaling and Torebio Tanfaran, witnesses in behalf of the United States, taken before Commissioner Alpheus Felch, were filed. (Vide pages 117 and 120 of this Transcript.)

In the same case the deposition of Isaac N. Thorn, a witness in behalf of the United States, taken before Commissioner Alpheus Felch, was filed. (Vide page 122 of this Transcript.)

SAN FRANCISCO, July 13, 1854.

In the same case the deposition of Pablo de la Guerra, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, was filed. (Vide page 127 of this Transcript.)

In the same case the deposition of José Maria Covarrubias, a witness in behalf of the claimants, taken before Commissioner Peter Lott, was filed. (Vide page 143 of this Transcript.)

In the same case the depositions of Tiburcio Vasquez, Francisco Sanchez, Alfred A. Green and Vicente Miramentez, witnesses in behalf of the United States, taken before Commissioner Peter Lott, were filed. (Vide pages 131, 136, 138 and 140 of this Transcript.)

SAN FRANCISCO, July 25, 1854.

In the same case the counsel for the claimants read the papers in evidence, followed by the United States Law Agent, and continued for to-morrow.

In the same case the United States Law Agent filed the following bill of objections, to wit: (Vide page 187 of this Transcript.)

In the same case the deposition of Julius K. Rose, a witness in behalf of the claimants, taken before Commissioner Peter Lott, was filed. (Vide page 147 of this Transcript.)

To the reading of said deposition the Law Agent filed the following objection, to wit: (Vide page 187 of this Transcript.)

In the same case the United States Law Agent filed the following proceedings of the Probate Court of the County of San Francisco, to wit: (Vide page 193 of this Transcript.)

SAN FRANCISCO, July 26, 1854.

In the same case the counsel for the claimants opened the argument, followed by the United States Law Agent, continued for to-morrow.

SAN FRANCISCO, July 27, 1854.

In the same case, argument by the counsel for the claimants resumed, followed by the United States Law Agent, and continued for to-morrow.

SAN FRANCISCO, July 28, 1854.

In the same case, argument in behalf of the United States resumed, followed by the counsel for the claimants, and concluded. Case submitted and taken under advisement by the Board.

SAN FRANCISCO, April 10, 1855.

In the same case, on motion of the counsel for the claimants, it is

ORDERED, That the submission of this case entered on the 28th July, 1854, be set aside, and the case be re-submitted on briefs.

SAN FRANCISCO, November 6, 1855.

In the same case Commissioner S. B. Farwell delivered the opinion of the Board confirming the claim, (vide page 195 of this Transcript.) and the following order was made, to wit: (Vide page 203 of this Transcript.)

Petition.

To the Honorable the Commissioners for ascertaining and settling private land claims in California.

The petition of Josefa de Haro, Natividad de Haro, Prudencio de Haro, Alonzo de Haro, Candelaria de Haro, Carlotte de Haro, and Rosalia de Haro, all heirs of Don Francisco de Haro, Sen., deceased, respectfully showeth,

That heretofore, to wit: on the twelfth of April, 1844, Ramon de Haro and Francisco de Haro, Jun., being the sons of Don Francisco de Haro, Sen., aforesaid, made and presented their petition to Governor Micheltorena, and solicited from him the grant of the tract of land called the Potrero de San Francisco, forwarding with their said petition, documents to show that their father, Francisco de Haro, under whose patria potestas they had been until thus consented to their petitioning for, and obtaining and holding of said land.

That said Governor Micheltorena, on the twenty-ninth of April, 1844, referred said petition to M. Jimeno, then Secretary of the State, who reported thereon that there was nothing to prevent a grant to said petitioners, as the Mission Dolores, which formerly claimed said land, did not own any more territory.

That said governor thereupon, by decree dated the thirtieth of April, 1844, declared said Ramon and Francisco de Haro the owners of said land, and directed the proper documents to be executed and delivered to said petitioners.

That on the first of May, 1844, a provisional grant was made to said Francisco and Ramon, by which they were permitted to take possession and to cultivate said lands under certain conditions, limitations in said grant expressed, and that said grant was made by Governor Micheltorena according to the requirements of law.

That said proceeding having been duly referred to the Departmental Assembly, that body resolved on the twenty-fourth of May, 1844, that the land might be granted unconditionally, whereupon on the said day the said Micheltorena made a supplemental grant upon the same paper as the first, and immediately following the same, by which the said land was ceded to the said Francisco and Ramon in full and complete ownership.

That said Ramon and Francisco de Haro took possession of said land and held it without being interfered therein by any body whomsoever, up to the time of their death.

That said land was inhabited by Francisco de Haro, Sen., as the heir of said Ramon and Francisco de Haro, Jun., and so possessed by him up to the time of his death; and that after the death of said Francisco de Haro, Sen., in the year 1849, said lands descended to your petitioners as the children and lawful heirs of said Francisco de Haro, Sen.

And your petitioners further state that the petition of Ramon and Francisco aforesaid, together with the documents proving their father's consent, the references, reports and decree, together with a duly certified copy of the provisional grant and maps, are on file in the office of the Surveyor General of the United States of America for the State of California, among the Mexican archives of California, and that duly certified copies of the same, together with the translations, are herewith submitted and prayed to be made a part of this petition.

That the original provisional and supplemental grants are in the hands of your petitioners and ready to be offered in evidence whenever required, translations of the same being herewith exhibited.

That said lands are situate in the County of San Francisco, are known under the name of Potrero de San Francisco, and bounded as follows:

And your petitioners further state that since said Potrero descended to them, they have been in the quiet and peaceable possession of said land and exercised full and undisputed ownership over the same.

And are not aware of the existence of any title paramount to or conflicting with their own. They therefore claim to be the owners thereof, and pray your honorable body may confirm their title thereto.

CLARKE, TAYLOR & BECKH, Attorneys.

Filed in office March 16th, 1852. GEO. FISHER, Secretary.
Recorded Journal, Vol. 1, pages 370, 371 and 372. GEO. FISHER, Secretary.

Deposition of Wm. A. Richardson.

SAN FRANCISCO, March 29th, 1853.

On this day, before Commissioner Harry J. Thorton, came William A. Richardson, a witness on behalf of the claimants, Josefa de Haro et al., Petition No. 101, and was duly sworn, his evidence being given in English:

Questions by Claimant.

Question 1. What is your name, age and place of residence?

A. My name is William A. Richardson; my age fifty-eight years, and I reside on my rancho at Saucelito, in Marin county.

Q. 2. Look at the document now shown you marked Exhibit No. 1, and attached to your deposition in this case, purporting to be a provisional grant from Manuel Micheltorena to Francisco and Ramon de Haro, of the land known as the Potrero of San Francisco. State what you know concerning the genuineness of the signature to said document.

A. I am well acquainted with the handwriting of Manuel Micheltorena and Manuel Jimeno, having often seen them write. Their signatures at the bottom of the second page, and that of Jimeno two lines from the top of the third page, are their genuine signatures. The signature of Manuel Micheltorena and of Jimeno, where they are written on the same sheet below, I do not believe to be genuine.

Q. 3. What do you know of the possession of the land claimed in this case?

A. The place which is bounded by good natural defences on three sides, and surrounded by an artificial fence on the other side, was occupied from the time of the grant above mentioned to the death of the grantee, by him; after his death, his two sons used it in the same way until their murder. And ever since it has been in the occupancy and use of the family.

WILLIAM A. RICHARDSON.

United States Law Agent present.

Sworn to and subscribed before me, this 30th of March, 1853.

HARRY J. THORNTON, Commissioner.

Filed in office March 30th, 1853. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 2, page 668. GEO. FISHER, Secretary.

Deposition of Francisco Arce.

OFFICE OF THE BOARD OF COMMISSIONERS, &c., &c., &c.

This day before Commissioner Thompson Campbell, came Fran-

cisco Arce, a witness in behalf of claimants Josefa de Haro, *et al.*, No. 101, who, after being duly sworn, deposed as follows:

Question 1. What is your name, age, and place of residence?

Answer. My name is Francisco Arce; I am thirty years of age, and I reside in Santa Clara County.

Q. 2. State whether you are acquainted with the handwriting of Manuel Micheltorena, former Governor of California, and whether you are acquainted with the handwriting of Manuel Jimeno, former Secretary of California, and if so, state the means of such knowledge?

A. I am well acquainted with the handwriting of both; I was employed as chief clerk in the office of Secretary of State for many years, during which Micheltorena was Governor, and Jimeno was Secretary of State of California.

Q. 3. Look at these signatures of the third and fourth pages on document H. I. T., No. 1 in case No. 101, and state your opinion as to their genuineness?

A. I have examined the said document and believe the two signatures of Manuel Micheltorrena, and the three signatures of Manuel Jimeno to be their true signatures.

Q. 4. Do you know anything of the de Haros obtaining these grants or either of them?

A. In the beginning of 1844, de Haros was recommended to me by the late Francisco Guerrero to assist them in obtaining a title issued to them for the land called the Potrero, for which they were then petitioning, and through my assistance they obtained this title. I believe I have among my papers the letter of recommendation from Guerrero, and other papers relating to this matter.

Question by Mr. Greenhow.

Question 1. Do you recollect any session or meeting of the Departmental Assembly whilst Micheltorena was Governor of California, and if so, when and where was it held?

Answer. I do not recollect.

FRANCISCO ARCE.

Sworn to and subscribed before me this 21st day of October, A.D. 1853. THOMPSON CAMPBELL, Commissioner.

Filed in office October 21st, 1853. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 3, page 283. GEO. FISHER, Secretary.

Deposition of D. Spence.

OFFICE OF THE BOARD OF COMMISSIONERS, &c., &c., &c.

This day before Commissioner Alpheus Felch, came David Spence, a witness in behalf of claimants Josefa de Haro, *et al.*, No. 101, who, after being duly sworn, deposed as follows:

Questions by Mr. Greenhow, Associate Law Agent, in behalf of the United States.

Question 1. What is your name, age, and place of residence?

Answer. My name is David Spence; my age fifty-five years, and I was born in Scotland; I have resided in California twenty-nine years; my residence during that time has been at Monterey.

Q. 2. Was you ever a member of the Departmental Assembly of California; if yea, when?

A. I was a member of that Assembly under the Governors Chico and Micheltorena.

Q. 3. When and where were the meetings of that body held under Micheltorena?

A. In his time we had a few sessions either in 1843 or 1844, at Monterey. These were special sessions held for special purposes. The Governor had received notice from the Mexican Government that war was expected between Mexico and the United States, and he was warned to put California in a state of defence. He called the Assembly together to take steps to provide the measures to obtain funds to enable him to do so. This was the special purpose of the sessions above mentioned.

Q. 4. Was any thing decreed or determined at these sessions, for that or for any other purpose?

A. It was agreed and determined, according to my best recollection, that Micheltorena should procure the means for doing so from the missions of California, by renting or selling any property belonging to them. It was there also determined that the next session should be held at the Mission of Santa Ynez, when the Governor chose to call them together, provided, that the general government of Mexico should not previously determine whether the capital should continue at Monterey or be removed to Los Angeles.

Q. 5. Within what time were all these sessions in Micheltorena's time?

A. All the sessions of the Assembly which were held while Micheltorena acted as Governor were held within a space of fifteen days, to the best of my recollection.

Q. 6. Look at the paper here presented, purporting to be a title to Francisco and Ramon de Haro, marked Exhibit No. 1, annexed

to the deposition of William A. Richardson, heretofore taken, and filed in this case, and state whether you recognize as genuine the signatures of Manuel Micheltorena and Manuel Jimeno, wherever they appear on said document?

A. I have examined the documents. The signatures appearing at the bottom of the second page are, to the best of my knowledge, the genuine signatures of said Micheltorena and Jimeno, respectively. The signature of Jimeno, near the top of the third page, I believe to be the true and genuine signature of said Manuel Jimeno; the other two signatures on the same page, and near the bottom of the page, I do not think are genuine. The two last mentioned signatures referred to purport to be those of Manuel Micheltorena and Manuel Jimeno.

(Mr. Howard, attorney for the claimant, objects to the competency of the last question and answer.)

Questions by Mr. Howard, Attorney for the Claimant.

Question 1. Had Micheltorena any authority from the Supreme Government to sell or rent any lands or other property belonging to the Missions?

Answer. I cannot exactly recollect ever having seen any law or orders to that effect; I may have seen them, but I cannot recollect that I have ever seen any.

Questions by Mr. Greenhow.

Question 1. In whose handwriting is that which purports to be an order or decree, bearing date Monterey, May 24th, 1844, on the third page of the mentioned paper, marked Exhibit No. 1?

Answer. I cannot say whose handwriting it is. D. SPENCE.

Subscribed and sworn to before me this 28th day of October, 1853.

——, Commissioner.

Filed in office October 28th, 1853. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 3, page 326. GEO. FISHER, Secretary.

Alpheus Felch

Deposition of J. K. Rose.

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS,
San Francisco, December 16, 1853.

This day, before Commissioner Alpheus Felch, came Julius K. Rose, a witness in behalf of claimant Josefa de Haro, *et al.*, petition No. 101, and being duly sworn, deposed as follows:

Questions by Mr. Howard, Attorney for the Claimant.

Question 1. What is your name, age and place of residence?

Answer. My name is Julius K. Rose; my age is thirty years, and I reside at San Francisco, California.

Q. 2. Was you the administrator in the estate of De Haro, if yea, which of the de Haros?

A. I was administrator in the estate of Francisco de Haro, who was the father of the grantees of the land claimed in this case.

Q. 3. When did you administer on his estate?

A. From the early part of the year 1850 to some time in 1851, when I resigned as administrator. He died about two years before I took out letters of administration, as I was informed.

Q. 4. Were Ramon de Haro and Francisco de Haro living at the time you obtained letters of administration?

A. They died previous to the decease of their father, said Francisco de Haro.

Q. 5. Did either of them leave a wife or children?

A. They did not, as I have been informed.

Q. 6. Did they leave sisters and brothers, if yea, what were their names?

A. They left both brothers and sisters; their names were as follows: Josefa, who was then the wife of Francisco Guerrero; Rosalia, who was then the wife of Augustus A. Andrews; Natividad, who was then the wife of one Castro, Prudencio, Candelaria Carlota and Alonzo; said Guerrero, Andrews and Castro are dead,

Q. 7. Was the mother of Francisco and Ramon de Haro living at the time you took out the letters of administration?

A. She was not.

Q. 8. Look on the document now here presented to you, marked H. I. T. No. 1, purporting to be a grant to Francisco and Ramon de Haro, and annexed to the deposition of William A. Richardson, heretofore taken and filed in this case, and state whether the said document ever came into your possession as administrator of said estate, and if so, when?

A. This document came into my possession in September, 1849, to the best of my recollection, and some months before I took out the letters of administration, and was in my hands during a portion if not all the time I was administrator. The document was showed to me by Mr. Guerrero on Sunday, when I was at his house, with other title papers belonging to the de Haro estate.

Q. 9. What was the appearance of the said paper when it came into your possession?

A. It appeared much as it does now, excepting that there are one or two certificates on it now that were not on it at that time.

Q. 10. Please state what those certificates are?

A. The first is the Recorder's certificate of the record of the document. There are also certain words and figures on it apparently made to identify the paper before the Land Commission, which was not on it at that time.

Q. 11. Please examine the signatures on the second and third pages of the document, purporting to be the signatures of Manuel Micheltorena and Manuel Jimeno, and state whether they have the same appearance now as when you first saw them, and whether in your opinion they are the true and genuine signatures of the said Micheltorena and Jimeno, respectively?

A. They appear now as they did when I first saw them, but I do not know enough of the handwriting of either of those persons to state whether these signatures are genuine or not.

Q. 12. Have you ever known the heirs to make any use of the land described in this grant, if yea, what use?

A. Mr. Guerrero and Mr. Andrews appeared to have the care of the property of the de Haro estate, and they occupied the land with cattle and horses belonging to the estate. and occasionally some of their own horses. When I first saw the land it was nearly enclosed by a stone wall, running from Mission Creek to an estero on the southern end of the Potrero. This was an old wall, and at that time very much out of repair. As soon as I was appointed administrator I repaired the fence, at an expense of one thousand dollars, by putting up the old wall a portion of the way and completing the remainder with posts and rails or boards. The work was done by Mr. Treat, who was the lessee of the place, and paid for by an allowance on account of rent. I leased him the land immediately after I was appointed administrator, reserving the privilege of putting the cattle and horses on that belonging to the estate, as I might collect them from time to time. The wall and fence above mentioned were on what was understood to be the line of the rancho, separating the land from the Mission grant. The tract is bounded an the north and southwest by Mission Creek, on the east by the bay, on the south by an estero or estuary, and on the west by the fence above mentioned.

Questions by Mr. Greenhow, Associate Law Agent.

Question 1. Have you seen Manuel Micheltorena or Manuel Jimeno sign their names, if yea, how often?

Answer. I never saw either of them write.

Q. 2. Do you know in whose hand is the writing on the third page of the document above mentioned, beginning with the words Monterey, May 24, 1841?

A. I do not.

Q. 3. Are you certain that the writing was on the document when you received it from said Guerrero?

A. I had a copy of it made shortly after I received it, which copy I believe I have in my possession, but am not certain this writing was on the document at the time, and I then noticed the

appearance of the signature to it. I am the more certain this part of the writing was on, because a man came to me and said they never had a grant of the land but only permission to occupy it for one year, and I got this document and showed it to him. I also showed it to others, among whom was Hiram Pearson.

Q. 4. What led you particularly to observe the appearance of the signatures on the third page?

A. Principally the size of the flourish and the poorness of the writing.

Q. 5. Did any of the de Haros at any time reside on this land, so far as you know or have reason to believe?

A. I had the impression that Francisco and Ramon de Haro, the grantees, once lived on the place, but I do not know how I came by the impression.

Q. 6. Did any other cattle or horses than those of the de Haros run on the land at the time when you took charge of it as administrator?

A. The cattle from three in common Ranchos ran in common from Rancho to Rancho, previous to my appointment as administrator. After the fence was repaired no cattle were allowed on the place except by permission of the lessee or myself.

Q. 7. Was any resistance made to your exclusion of other persons from the use of this land for their cattle?

A. None. It was conceded by all persons who owned cattle at that time in the neighborhood, that the land belonged to the de Haro family. The neighbors were mostly Californians at that time.

Question by Mr. Howard.

Q. 1. Did you, as administrator of said estate, regard and treat the writing on the third page of said document as a genuine grant?

A. I did. JULIUS. K. ROSE.

Subscribed and sworn to before me this 16th day of December, 1853. ALPHEUS FELCH, Commissioner.

Filed in Office Dec. 16th, 1853. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 3, page 534. GEO. FISHER, Secretary.

Deposition of Wm. A. Richardson.

OFFICE OF THE BOARD OF COMMISSIONERS, &c., &c., &c.

This day before Commissioner Thompson Campbell, came William A. Richardson, a witness in behalf of Claimants Josefa de Haro *et al.*, No. 101, who, after being duly sworn, deposed as follows:

Question 1. What is your name, age and place of residence?

Answer. My name is William A. Richardson; I am fifty-eight years of age, and I reside in Marin County.

Q. 2. What do you know of the occupation of a grant of a tract of land by Francisco and Ramon de Haro, called the Potrero de San Francisco?

A. I know they occupied it; they had a small house on it, and cultivated a small piece of it, but mostly occupied it with cattle and horses.

Q. 3. When did you first know of their being first on the land?

A. I first knew them to live on the land in the year 1844.

Q. 4. Did they have any land under fence?

A. Yes; it was fenced with a stone wall.

Q. 5. Where was the house situated in reference to the fence?

A. The house was situated inside the fence, at the entrance of the gateway.

Q. 6. About how much land do you think was under fence?

A. I think there was about a half or three quarters of a league. It was fenced in the shape of a square; one part was near the creek.

Q. 7. State whether you are acquainted with the hand-writing of Micheltorena, and whether you have seen him write?

A. Yes; I have seen him write, and am acquainted with his hand-writing.

Q. 8. Will you look at the signatures of Micheltorena on document marked H. I. T., No. 1, and state whether they are his genuine signatures?

A. Yes; the first one is his exact signature, and the second one I have before stated in another deposition, was doubtful; but since I have seen official documents which I have from Micheltorena, writing in as bad a hand as this is, I think this signature is genuine. I have had private correspondence with Micheltorena.

Questions by Mr. Greenhow.

Question 1. Look at the signature of Manuel Jimeno, near the bottom of the third page of the said document marked as above, being the third signature of that name on the said paper, and say if you recognize it as the true signature of Manuel Jimeno?

Answer. Yes sir, I think it is his signature. At the same time Micheltorena signed, the fetes they used to have might cause the difference in their hand-writing.

Re-examined by Mr. Howard.

Question 1. You think there can be no doubt of the genuineness

of the first signature of Micheltorena, and the first and second signatures of Jimeno?

Answer. I have not the least doubt of their genuineness.

WILLIAM A. RICHARDSON.

Sworn to and subscribed before me this twenty-first day of October, A.D. 1853. THOMPSON CAMPBELL, Commissioner.

Filed in office October 21st, 1853. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 3, page 285. GEO. FISHER, Secretary.

Deposition of Francisco Sanchez.

UNITED STATES LAND COMMISSIONERS, San Francisco March 2, 1854.

On this day, before Commissioner Thompson Campbell, came Francisco Sanchez, a witness in behalf of the United States, Case No. 101, who, after being duly sworn, deposed as follows, his evidence being interpreted by the Secretary:

Questions by the Law Agent.

Question 1. What is your name, age, and place of residence?

Answer. My name is Francisco Sanchez; I am forty-eight years of age, and I reside at the Mission of San Francisco.

Q. 2. Were you acquainted with Manuel Micheltorena, former Governor of California, and if yea, were you acquainted with his handwriting, and if so, state your means of knowledge.

A. I was acquainted with Governor Micheltorena; I am acquainted with his handwriting, having often seen him write, and having received a great many official dispatches from him. I am also acquainted with the handwriting of Manuel Jimeno, having often seen him write.

Q. 3. Look on the paper now shown you, marked document H. I. T., No. 1, and annexed to the deposition of William A. Richardson, and state whether the signatures of Manuel Micheltorena and Manuel Jimeno, where they appear on said document, are their genuine signatures?

A. I have examined the document marked as in the above interrogatory described, and the signatures of Manuel Micheltorena and Manuel Jimeno, where they appear on the second page of said document, are their genuine signatures. But their names as written on the third page of said document are not in their handwriting and are not genuine.

Q. 4. State the reasons upon which your opinion, that the signatures as written on the third page are not genuine, is founded?

A. My opinion is based on the fact that the name of Micheltorena, as written on the third page, does not correspond with his genuine signature, as written on the first page of said document. The name of Micheltorena, as written on the first page, is written in the style or model in which he always wrote his name.

Q. 5. Is the handwriting and flourish in which the name of Micheltorena is written on the third page, in heavier or larger hand than Micheltorena wrote when signing his name?

Mr. Howard objects to this question on the ground that it is leading.

A. Micheltorena did not generally write in as large a hand as is used on the third page, and it is worse executed than was usual for him.

Q. 6. Is there any thing in the execution of the flourishes attached to the signatures of Micheltorena and Jimeno, as written in the third page, which would indicate that they were forgeries?

Law Agent objects to the question on the ground that it is leading.

A. There is, because they are not so well executed as the same persons generally executed them.

Q. 7. Are you acquainted with the Potrero of San Francisco, claimed in this case, and if so how long have you known it?

A. I am acquainted with it and have known it ever since I was a small boy.

Q. 8. Who occupied said place when you first knew it and state what you know of its occupancy since?

A. When I first knew it it was occupied by the Mission of Dolores, and the Mission continued to occupy it until the year 1846. It was said that the Potrero belonged to the Haros Francisco and Ramon. This was after the Americans had come into the country.

Q. 9. Who built the wall that passes through the Potrero and when was it built?

A. The wall has been there since my earliest recollection, and it was built by the founders of the Mission.

Q. 10. Was there ever any house built in the Potrero previous to 1846 by any one?

A. There was not by any one.

Q. 11. Did either of the Haros ever occupy the Potrero of San Francisco or any part of it?

A. They never have lived upon it or built a house on any part of it; and in 1847 it was said that it belonged to the Haros.

Q. 12. State your relationship to Francisco de Haro, Sen., and your means of knowledge of the occupancy of his sons of the said Potrero of San Francisco?

A. Francisco de Haro, Sen., was my brother-in-law, and his sons never did occupy it. I knew they did not occupy it, because the sons died in the year 1846, and before that time it had been considered as vacant land.

Q. 13. State what offices you have held under the Mexican Government and when you held them?

A. In 1824 I was a soldier; a cadet in 1847. I was Military Commander at San Francisco, subject to the orders of General Vallejo. In 1842 I was Alcalde in San Francisco. In 1845 I was again appointed Military Commandant and Captain of the Port of San Francisco, by General Castro. The last office I held until the 9th day of July, 1846, when the Americans took possession of the country.

Q. 14. During the time above specified, were you or were you not familiar with the administration of public officers in California, and were you familiar with the signatures of each of the Governors and Secretaries of State during that time?

Mr. Howard objects to this question, on the ground that it is leading.

A. I was not familiar with the administration of Government affairs, as I had no office under the Government of a civil character until I was Alcalde as above stated. I was familiar with the signature during that time.

Q. 15. Did Francisco de Haro, Jr., and Ramon de Haro have any cattle or horses in 1844?

A. They had at that time; when they died they were minors, and about nineteen years of age.

Q. 16. State whether or not the lands of the Potrero of San Francisco were occupied as common lands from 1844 to 1846, inclusive?

Mr. Howard objects to this question, on the ground that it is leading.

A. From the year 1844 to 1846, said lands were occupied by the animals of the inhabitants of the Mission of San Francisco.

Questions by Mr. Howard.

Question 1. Do you mean to say upon the oath you have taken, that you never knew of this land being claimed or occupied by Francisco or Ramon de Haro during their lifetime?

Answer. I know they petitioned for said place, but they never told me that it was their property.

Q. 2. Have you never said to any one that you were several days with these young men in Monterey when they applied for and obtained a grant for this land?

A. I have said so.

Q. 3. What interest have you with the squatters in this land?

A. I have none.

Q. 4. What have they or any of their agents given you, or promised to give you, for testifying in this case?

A. They neither promised nor have they given me, nor have I any need of it; I have plenty to support myself.

Q. 5. What is the nature of your agreement with Charles Brown in regard to the Potrero lands?

Law Agent objects to this question, on the ground, first, that it supposes a fact to be true which has not been spoken of in any previous part of the deposition; second, that it was not touching any matter admitted to in the direct examination.

A. I have no trade or understanding or agreement with him, of any kind whatever, in regard to it.

Questions by Law Agent.

Question 1. What did you mean when you stated that you were with the young men at Monterey when they obtained their grant?

Answer. I don't say that they obtained the grant, but that they went with me to ask for one.

Q. 2. What did they obtain at the time you state they went with you to Monterey?

A. I don't know what they obtained when they went to present their petition; I have not said that they obtained a concession, but only that they went to ask for one.

Q. 3. Did Francisco de Haro, Jun., and Ramon de Haro ask for a provisional concession, or for one in full property?

Mr. Howard objects to this question.

A. I don't know; I did not see their petition. The petition was presented in 1844; I don't recollect whether it was in the latter part of 1843 or in 1844, when it was presented.

FRANCISCO SANCHEZ.

Sworn to and subscribed before me this 2d day of March, A. D. 1844. THOMPSON CAMPBELL, Commissioner.

Filed in office March 2d, 1854. GEO. FISHER, Sec'y.
Recorded in Evidence B, volume 4, page 101. GEO. FISHER, Sec'y.

Exhibit 1, *S. D. K. Expediente.*

1844.

Espediente promevido por los Cuidadanos. Francisco y Ramon Haro, en pretencion del parage nombrado Potrero de San Francisco. 360.

Exmo Sñr Gobernador de las Californias:

Francisco de Haro á nombre de nuestra familia Mejicanos por nacimiento y abecindados en la Ex-Mision de San Francisco de Asis ante V. E. con la mas recta sumisiou asen presente que teniendo que contraer la parte de ganado que le corresponde à la finada mi madre del Rancho del finado José Antonio Sanchez y tratandolo de reducir imploramos a S. E. para que en uso de sus facultades se nos conceda un corto terreno que se nombra Potrero de San Francisco, teniendo de N. à S. dos mil docientas ochenta y ocho Vs. y de E. á O. dos mil quinientos ocho, siendo medido hasta las lomerias por no haber facultativo para el efecto, segun el diseño que acompañamos á V. E. y como dho. terreno se puede sercar tratamos de meter el ganado manso por ser muy chico el que ocupe hoy todo el ganado de mi S. padre, quien nos ha dado el permiso por estar bajo de la partria potestad para representar P. T. A. V. E. suplicamos se digne el hacernos este beneficio de lo que recibermos merced y gracia, jurando no ser de malicia, etc., no siendo en papel del sello que corresponde por no haverlo.

San Francisco, Abril 12 de 1844. RAMON DE HARO,
FRANCISCO M. HARO.

El abajo firmado, por el presente doy à mis hijos Francisco y Ramon de Haro el correspondiente asenso para que puedan (por razon de su menor edad) pretender ell superior Gobierno del Departmento la consecion del Potrero de la Ex Mission de S. Francisco de Asis que se halla valdio, del cual demuestra el diseño que a compañan á su peticion debiendo ser (si fuese del superior agrado conceder selos para beneficio de sus hermanos, tambien. Y para los fines que les convengan, les dè el presente. En la referida Ex Mission de S. Frahcisco de Asis a 12 de April de 1844. FRANCISCO DE HARO.

Sñr. Alcalde de la 1a. Nominacion de San Francisco.

Francisco de Haro vecino de esta jurisdiccion à nombre de sus hijos, Francisco y Ramon, en debida forma comparesco, y espongo hallarse mis citados hijos con mi correspondiente assenso, para solicitar del supr. Gobierno del Departamente la consecion del Potrero que se halla al frente de la Ex-Mision de San Francisco de Asis; el

cual se haya valdio y asolado sus cercas; y deseando allanar las inconvenientes que puedan entorpecer el pronto despacho de dcho· peticion por tener que venir á informe desde aya y ovio de estos atrasos; ocurro à V. à fin de que se sirba instruir el que juzgue conveniente en mi presente solicitud. Por tanto A. V. pido provera en justicia; sirbiendose admitirla en papel comun por no haber del sello que corresponde. Juro lo nro. etc.

San Francisco, Abril 13 de 1844. FRANCISCO DE HARO.

San Francisco de Asis, Abril 13, 1844.

Por las razones que espone el pretendiente doy informe del parage pedido y digo que no hay pretendientes ni reclamantes hasta la fecha, y no esta ocupado por comnnidad ni persona alguna.

GUILLERMO HINCKLEY.

Monterey, Abril 29 de 1844. Infe. el S. Srio del despacho tomando los informes necesarios. MICHELTORENA.

Exmo Sñr Gobernador:

La Mision de San Francisco ya no tiene hienes ningunos y por consiguiente el Potrero que se pretende està valdio como lo acreitan las solicitantes con un informe del Juez respectivo, y como à dcho. establecimiento debe señalarsele sus egidos pienso que entretanto pueden ocupar el terreno los interesados por una licencia provicional que V. E. se digne dar les por no perjudicar à la comunidad ni particular alguno. La disposicion de V. E. será la mas asertada.

Monterey, Abril 29 de 1844. MANUEL JIMENO.

Monterey, 30 de Abril de 1844.

Conf^e. MICHELTORENA.

Monterey, 30 de Abril de 1844.

Vista la peticion con que da principio este expediente los informes que preseden con todo lo demas que se tubo presente y ver convino de conformidad con las leyes y reglamientos de la materia declaro à Francisco y Ramon Haro, agraciados en que ocupen provicionalmiente el terreno que nombran Potrero de San Francisco, en estencion de medio sitio de ganado mayor, siendo sus linderos los Esteros de la boca del Potrero, y las Lomenias que lo circunde. Librese el correspondiente despacho, tomese razon, y dirijase una comunicacion al encargo de dicho establecimiento. El Exmo Sñr. Governador asi lo mando decreto y firmo. Doy fee.

Manl. Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante Gral. de la plana mayor del mismo, Comandante General, Gobernador è Inspector del Departamento de Californias.

Por cuanto Francisco y Ramon Haro han pretendido la consecion del potrero, que se nombre de San Francisco desde la voca de los Esteros, con la lomeria que lo circunda y habiendose practicado las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos de la materia, he venido en uso de las facultades que me son conferidas à nombre de la Nacion Mejicana; en permetirles la ocupacion del potrero mencionado, sujetandose à la medicion que se haya de los egidos del establecimiento de San Francisco y à las condiciones siguientes.

1a. No podran por ningun titulo venderlo ni enagenarlo sin perjudicar algunos bienes que tubiere el establecimento de San Francisco.

2a. No impidiran las travecias, caminos y servidumbres, destinandolo para el cultivo y bienes que intentan introducir, pero dentro de un año à lo mas estara ocupado.

3. El terreno de que se hace mencion es de medio sitio de ganado mayor, y si contravinieren à estas condiciones perdera su derecho à esta consecion provisional que se entrega á los interesados para su resguardo y demas fines. Dado en Monterey, à primero de Mayo de mil ocho cientos cuarenta y cuatro.

MANUEL MICHELTORENA.

MANUEL JIMENO, Secretario.

Es copia de la original que se entrega a las interesados. MANUEL JIMENO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES, FOR CALIFORNIA;—I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine inclusive, and each of which is verified by my initials, (S. D. K.) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

[L. S.] In testimony whereof I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office) at the city of San Francisco, Cal., this second day of March A. D. 1852. SAMUEL D. KING,
Surveyor General Cal.

Filed in office March 16th, 1852. GEO. FISHER, Secretary.

Translation.

1844.

A record of proceedings, at the instance of the citizens Francisco and Ramon Haro, who solicit a parcel of land called Potrero de San Francisco. 360.

Excellent Señor Governor of both Californias: We, Francisco de Haro and Ramon de Haro, in the name of our family, Mexican citizens by birth, and residents of the ex-Mission of San Francisco de Asis, represent to your Excellency, with due submission, that inasmuch as we have to remove the share of cattle appertaining to our deceased mother out of the rancho of the deceased José Antonio Sanchez, and as we have in view to tame them, we entreat your Excellency to grant to us in the exercise of your Excellency's powers, a small parcel of land called Potrero de San Francisco, measuring from North to South 2,288 varas, and from East to West 2,508, being measured as far as to the lomeria range of highlands, because there is no competent person to do it, according to the annexed sketch that we submit to your Excellency; and as said parcel of land can be enclosed, we intend to place on it the tamed cattle, because of the small extent of the location occupied at present by the cattle of our father, who has given us due permission to petition, as we are under the parental power and control (patria potestad). Therefore, we entreat your Excellency to grant us this benefit, whereby we shall receive favor and grace. We swear not to proceed moved by malice, etc. This memorial has not been written on paper of the corresponding stamp, there not being any here.

San Francisco, April 12th, 1844.

(Signed) RAMON DE HARO.
FRANCISCO DE HARO.

I, the undersigned, grant by the present document, to my sons, Francisco and Ramon de Haro, the corresponding assent enabling them (because they are minors) to solicit the Superior Government of the Department the grant of the Potrero of the ex-Mission of San Francisco de Asis, at present lying unoccupied, and represented in the sketch accompanying the petition.

Said Potrero being intended to be (if it should please the Superior athority to grant it) for the benefit of their other brothers as well as themselves, and to answer due ends I give them this document in the aforementioned ex-Mission of San Francisco de Asis, on the 12th day of April, 1844.

(Signed) FRANCISCO DE HARO.

To the Honorable the Alcalde of first nomination of San Francisco:

I, Francisco de Haro, a resident of this jurisdiction, in the name of my sons, Francisco and Ramon, formally appear and say that my sons aforementioned, have received my assent to solicit of the Superior Government of the Department, the grant of the Potrero that lies opposite the ex-Mission of San Francisco de Asis, which stands unoccupied, and the enclosures of which are thrown down, and lying on the ground; and inasmuch as I wish to remove the obstacles that may obstruct the speedy dispatch of said petition, and since it must be referred thence to this place for report and information, and I want to obviate this delay, I therefore apply to you, in order that you be pleased to report as you may think convenient, in the subject of my solicitation.

Therefore, I entreat you to proceed in this matter according to right, and to direct this memorial, written on common paper, there not being here any of the corresponding stamped; thus I swear, &c.

San Francisco, April 13th, 1844.

(Signed) FRANCISCO DE HARO.

SAN FRANCISCO DE ASIS, April 13th, 1844.

In consideration of the reasons presented by the party who solicits, I proceed to report about the location in request, declaring that up to this day there are no claimants of any kind, and it is not occupied by any community or private individual.

(Signed) G. HINKLEY.

MONTEREY, April 29th, 1844.

Let the Secretary of State report on the same, and take the necessary information.

(Signed) MICHELTORENA.

Excellent Señor—Governor: The Mission of San Francisco no longer holds property of any kind, and consequently the Potrero (or enclosed place for keeping horses) in request, is lying unoccupied, as the soliciting parties show by means of a report proceeding from the respective Judge; and inasmuch as there are to be assigned to said establishment, its corporation or common land, I am of opinion that in the meanwhile the parties might occupy the plot of land, by virtue of a provisional license of your Excellency, because no prejudice is caused thereby to the community to any

private individual. Your Excellency's own decision will doubtless be the most proper one. MANUEL JIMENO.

Monterey, April 29th, 1844.

Monterey, April 30th, 1844.

In conformity. MICHELTORENA.

MONTEREY, April 30th, 1844.

After examining the petition at the head of this proceeding, the preceding reports, and whatever else was thought to the purpose, in conformity with the laws and regulations on the subject, I declare Francisco and Ramon de Haro empowered to occupy provisionally the piece of land called Potrero de San Francisco, to the extent of half a square league, the boundaries to be the extremities of the mouth of the Potrero, and the range of hillocks or highlands environing it. Let the corresponding patent be issued; let it be duly entered, and let this information be communicated to the person in charge of said establishment. His Excellency the Governor thus did order and sign. I bear witness thereof.

Manuel Micheltorena, General of Brigade in the Mexican Army, Adjutant-General of the staff of the same, Commandant-General, Governor and Inspector of the Department of California:

WHEREAS, Francisco and Ramon de Haro have solicited the grant of the Potrero de San Francisco, so called, from the mouth of the Estuaries, together with the high land surrounding it, all the necessary investigations having been made according as the laws and regulations in the matter prescribed, by virtue of the authority in me vested, I have thought proper, in the name of the Mexican nation, to grant to them the occupation of the aforementioned Potrero, subject to the mensuration to be made of the corporation or common lands (egidos) for the establishment of San Francisco, and under the following conditions:

1st. They shall have no power, under any consideration, to sell or alienate it to the detriment of any of the proprietors of the establishment of San Francisco.

2nd. They shall not obstruct the paths, roads and servitudes using it for culture and cattle they intend to introduce on it, but within a year at the most it must be occupied.

3rd. The parcel of land to which reference is made is of half a square league, (medio sition,) and if they should transgress any of these conditions, they shall lose their right to this provisional grant, which is delivered to the parties concerned for their security and other ends. Given in Monterey, on the first day of May, 1844.

(Signed) MANUEL MICHELTORENA.

(Signed) MANUEL JIMENO.

This is a copy of the original which was delivered to the parties concerned. M. JIMENO.

Filed in office March 16th, 1852. GEO. FISHER, Secretary.

Doc. H. I. T. No. 1, annexed to deposition of Wm. A. Richardson, taken before Commissioner H. I. Thornton.

Sello Cuatro Dos Reales—Habilitado provicionalmente por la Aduana Maritima del puerto de las Californias, para los anos de mil ocho cientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA. PABLO DE LA GUERRA.

[SELLO.] El Cuidadano, Manuel Micheltorena, General de Brigada del Ejercito Mexicano, Ayudante General de la plana mayor del mismo Governador Comandante-General é Inspector del Departemento de las Californias.

Por cuanto, los cuidadanos Francisco y Ramon de Haro, han pedido la consecion del Potrero que se nombra de San Francisco, desde la boca de los esteros con la lomeria que lo circunda y habiendose practicado las diligencias y averiguaciones cocsernientes segun lo dispuesto per leyes y reglamentos de la materia, he venido en uso de las facultades que me son conferidos, en nombre de la Nacion Majicana, en permitirles la ocupacion del Potrero mencionado, sugetandose á la medicion que se haga de los egidos del establecemiento de San Francisco y á las condicionet siguientes:

1. No podran por ningun titulo venderlo ni enagenarlo, sin perjudicar algunos bienes que tubiere el establecemiento de San Francisco.

2. No impediran las travacias, caminos y servidumbres, destinandolo para el cultivo y bienes que intentan introducir, pero dentro de unn año á lo mas estará ocupado.

3. El terreno de que se hace mencion es de medio sitio de ganado mayor y si controvinieren á estas condiciones perderán su derecho á esta concesion provicional que se le entrega á los intersados para su resguardo y demas fines.

Dado en Monterey, á primero de Mayo, de mil ochocientos cuarenta y cuatro. MICHELTORENA.

MAN'L JIMENO, Srio.

Queda tomada razon de esta licencia provicional en el libro respectivo á fo 8. JIMENO.

MONTEREY, Mayo 24, de 1844.

Previas las averguaciones correspondientes al Potrero, si podrá estorvar el egido del nuevo pueblo formado en la Yerba Buena ó perjudicar á los vienes de la Mision y trafico de camino ó servi-

dumbre publica y en vista de no ser perjudicable y de acuerdo con la Honorable Asemblea Departmental por decreto de hoy he venido en concedarlo en propriedad el terreno solicitado por los cuidadanos Francisco y Ramon de Haro, para que hagan de el uso que mejor les convenga. MAN'L MICHELTORENA.

MAN'L JIMENO, Srio.

Recorded in the office of the Alcalde in Book A of Spanish Records, pages 66 and 67, San Francisco, January 12th, 1858, 12 M. JOS. HENRIQUE, Rec. Clerk.

Filed in office March 30th, 1853. GEO. FISHER, Secretary.

Translation.

Sealed Paper of Two Rials--Provided Provisionally by the Maritime Custom House at the Port of Monterey, in the Department of the Californias, for years 1844 and 1845.

MICHELTORENA. PABLO DE LA GUERRA.

[L. S.] The citizen, Manuel Micheltorena, General of the Mexican Army, Adjutant General of the same, Governor, Commander-in-Chief and Inspector of the Department of the Californias.

The citizens Francisco and Ramon Haro, having asked for a grant of the pasture land known by the name of San Francisco, from the mouth of the creek, with the range of hills that encircle it, and the proceedings and enquiry in relation to it having been made in conformity to law and the regulatiens on the subject, I have determined in virtue of the powers vested in me by the Mexican nation, to permit the said Messrs. Haro to occupy the before-mentioned pasture ground, subjecting themselves to the limits that shall be prescribed to the establishment of San Francisco, and to the following conditions:

1st. That they cannot for any reason sell it, or dispose of it, but it should be injurious to the property of the establishment of San Francisco.

2d. That they will not obstruct the highways, roads and right of way, appropriating it to cultivation and the introduction of property by them, and that within one year they will occupy the same.

3d. The land before-mentioned is half a league square; and should they contravene these conditions they will forfeit their right to this provisional grant, which is delivered to the parties interested for their security, and for other purposes. Done in

Monterey, the first of May, one thousand eight hundred and forty-four. MAN'L MICHELTORENA.

MAN'L JIMENO, Secretary.

A note of this provisional license is made in the respeetive book at page 8. JIMENO.

MONTEREY, May 24th, 1844.

The proper enquiry relative to the pasture land having been made, whether the grant of it would interfere with the limits of the new town now forming in Yerba Buena, or will be injurious to the property of the Mission, or obstruct the transit of the road or public right of way, and it resulting that it will not be thus prejudicial, and in accordance with the opinion of the Honorable Assembly of the Department, expressed in its decree of this date, I have determined to grant the aforesaid land in fee simple to the citizens Francisco and Ramon Haro, that they may do what they please with it. MAN'L MICHELTORENA.

MAN'L JIMENO, Secretary.

A note in English is appended to said papers in the following words: Recorded in the office of the Alcalde in book "A" of Spanish Records, pages 66 and 67, San Francisco, January 12th, 1850, 12 M. Jos. HENRIQUES, Recording Clerk.

CALIFORNIA, } ss.
San Francisco, }

I, the undersigned, Public Translator for the District of San Francisco, hereby certify that the foregoing are true and faithful translations of the original papers in the Spanish language, laid before me for translation by Don Francisco Guerrero, and that the Transcript of the endorsement of the Alcalde's Clerk is a faithful copy of the said endorsement. Given under my hand in San Francisco, this 20th day of April, 1850. H. TOLER,

Public Translator for the District of San Francisco.

Filed in office March 16th, 1852. GEO. FISHER, Secretary.

Deposition of J. P. Leese.

UNITED STATES LAND COMMISSIONERS, }
San Francisco, March 2d, 1854. }

On this day, before Commissioner Thompson Campbell, came Jacob P. Leese, a witness on behalf of the claimants, Josefa de Haro, et al., case No. 101, who, after being duly sworn, deposed as follows:

Question 1. What is your name, age, and place of residence?

Answer. My name is Jacob P. Leese, I am forty-five years of age, and I reside in Monterey.

Q. Are you acquainted with the signatures of Manuel Michel-

torena, Manuel Jimeno, Juan N. Padilla, Francisco Guerrero, and Gregorio Brunes, and if so, state your means of knowledge.

A. I am acquainted with their signatures; I have seen them all write frequently; I have had communications from them all.

Q. 3. Look on the paper now shown you, and marked Exhibit C, No. 1, and state whether the signatures of said persons, where they appear on said document, are their genuine signatures?

A. I have examined said paper and recognize the signatures of the said persons where they appear on said paper, to be their genuine signatures. Juan Padilla was Alcalde in 1845, and it was his duty, upon application, to put parties in possession of lands for which they had received a grant; this was the custom.

Q. 4. Do you know anything of the possession of a tract of land by Ramon and Francisco de Haro, called Potrero de San Francisco?

A. I only know it by report.

Questions by Law Agent.

Question 1. Was there more than one place in this neighborhood called Potrero de San Francisco, and if so, state their respective locations.

A. There was one Potrero on the southern side of Mission creek, and another Potrero on the southern [northern] side of that and adjoining it; the northern Potrero, which bounds on the creek, I understood it to belong to the de Haros; both Potreros are bounded on the east by the bay; the farm of the Potrero, which I supposed belonged to the de Haros, I am unable particularly to describe.

Q. 2. Look on the map shown you, and which is a traced copy of the Expediente filed in this case, and state whether it exhibits a fair outline of the claim which you supposed is the Potrero claimed by Francisco and Ramon de Haro?

A. The map line represents the entrance of Mission Creek, but does not represent the land of the Potrero; but in my opinion the map is made to represent the place; my own judgment is, that a surveyor could not locate said place from the description given on the map, without any other means of information.

Q. 3. In what direction from the Mission creek does this Potrero lie?

A. It lies south and east.

Question by Mr. Howard.

Question 1. What are the boundaries of the Potrero claimed by the de Haros?

Answer. On the south it is bounded by the Mission creek, on the west by an arm of the same creek and a stone wall, which continue round to the bay of San Francisco, on the east by the bay; the Potrero claimed by the de Haros lies easterly and in front of the Mission buildings; the representation of the buildings on this map, I think is intended to represent the Mission buildings and their relative position from the Potrero.

JACOB P. LEESE.

Sworn to and subscribed before me this 2d day of March, A. D. 1854. THOMPSON CAMPBELL, Commissioner.

Filed in office March 2d, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 4, page 15. GEO. FISHER, Secretary.

Deposition of Henry F. Teschemacher.

UNITED STATES LAND COMMISSIONERS,
San Francisco, March 2d, 1854.

On this day, before Commissioner Thompson Campbell, came Henry F. Teschemacher, a witness in behalf of claimants, Josefa de Haro et al., case No. 101, who, after being duly sworn, deposed as follows:

Question 1. What is your name, age, and place of residence?

Answer. My name is Henry F. Teschemacher, I am thirty-one years of age, and I reside in San Francisco.

Q. 2. Are you acquainted with the signatures of Manuel Micheltorena, Manuel Jimeno, Juan Nepo. Padilla and Francisco Guerrero, and if so, state your means of knowledge?

A. I am acquainted with their signatures; I have seen them write frequently, and have transacted business with all of them for the last twelve years.

Q. 3. Look on the document now shown you and marked Exhibit C, No. 1, and state whether the signatures of the said mentioned persons, where they appear on said document, are their genuine signatures?

A. I have examined said document and recognize the signatures of Jimeno, Padilla and Guerrero, where they appear in said document, to be their genuine signatures, and have no doubt as to the genuineness of each of them. As to the signature of Micheltorena, I have seen his name attached to public documents, official and private notes, but I never saw him write; I should say, however, that his signature, where it appears in said document, is his genuine signature. Padilla was Alcalde here and in Dolores in the year 1845.

Q. 4. Do you know anything of the claim or occupation by Francisco or Ramon de Haro of a tract of land known as Potrero de San Francisco?

A. I know nothing except by report, as I know other farms in the country. I have seen their horses on the place; we were in the habit of sending our horses to that place to recruit; permission in such cases was always obtained from Guerrero.

Q. 5. About what year did you see their mares and horses on the land?

A. I saw them there from 1842 up to 1846; by report, this place belonged to the de Haro family; Guerrero was married to one of old de Haro's daughters; Francisco, Jun., and Ramon de Haro were never married; the following named persons are sisters of Francisco and Ramon, now deceased, to wit: Josefa, Rosalia, Natividad; there are others, but I do not know their names; I have known the tract of land called Potrero since the year 1842; two or three years after this I was better acquainted in the country.

Questions by Law Agent.

Question 1. To whom did the cattle and horses belong that you saw on said place, to the old man or to his sons?

Answer. They belonged to that family; I mean the mares, I don't speak of cattle. The place was partially enclosed by a wall built by the Mission; in some places the wall was in ruins, and in others it was good.

H. F. TESCHEMACHER.

THOMPSON CAMPBELL, Commissioner.

Filed in office, March 2d, 1854. GEO. FISHER, Sec'y.
Recorded in Evidence, B. Vol. 4, page 13. GEO. FISHER, Sec'y.

Deposition of Abel Stearns.

UNITED STATES LAND COMMISSION,
San Francisco, March 2, 1854.

On this day, before Commissioner Thompson Campbell, came Abel Stearns, a witness in behalf of the claimants, Josefa de Haro et al., Case No. 101, who, after being duly sworn, deposed as follows:

Question 1. What is your name, age and place of residence?

Answer. My name is Abel Stearns, I am fifty-six years of age, and I reside at Los Angeles.

Q. 2. Are you acquainted with the hand of Manuel Micheltorena and Manuel Jimeno, and if so, state your knowledge?

A. I am acquainted with the handwriting of both of them, having seen thom both write.

Q. 3. Are you acquainted with the signature of Juan Nepo. Padilla, and if so, state your means of knowledge?

A. I am acquainted with his signature, having seen him write.

Q. 4. Look on the paper now shown you, and marked Exhibit C, No. 1, and state whether the signatures of Manuel Micheltorena Manuel Jimeno and Juan Nepo. Padilla, attached to said paper, wherever they appear, are their genuine signatures?

A. I have examined said document, and believe the signatures of said persons, where they appear on the same, to be genuine.

Q. 5. How long have you resided in California, and what has been your means of knowing the signatures of Micheltorena and Jimeno?

A. I have resided in California ever since the year 1829, more than 24 years; I have transacted business personally with each of them, and have corresponded with them, and have documents in my possession from them.

Q. 6. Do you know anything of the claim, occupancy and possession, by Ramon and Francisco de Haro, of a tract of land called Potrero de San Francisco?

A. I do not know, of my own knowledge, but have heard by public notoriety, that they had a rancho called by that name; I first learned of it some four our five years ago. In 1844, Micheltorena occupied the office of Governor, and Jimeno the office of Secretary. Law Agent present.

ABEL STEARNS.

Sworn to and subscribed before me, this 2d day of March, A. D. 1854. THOMPSON CAMPBELL, Commissioner.

Filed in office, March 2d, 1854. GEO. FISHER, Sec'y.
Recorded in Evidence, B. Vol. 4, p. 20. GEO. FISHER, Sec'y.

Deposition of Thomas O. Larkin.

UNITED STATES LAND COMMISSIONERS, }
San Francisco, March 7th, 1854. }

On this day, before Commissioner R. Aug. Thompson, came Thomas O. Larkin, a witness in behalf of the claimants, Josefa de Haro et al., Case No. 101, who, after being duly sworn, deposed as follows: Present, Volney E. Howard, Esq., Attorney for claimants, and J. H. McKune, United States Law Agent. Witness states that

his name is Thomas O. Larkin; his age fifty-one years, and residence San Francisco, California.

Questions by Claimants' Attorney.

Question. Look at the document now shown you, marked Exhibit C. No. 1, Thompson Campbell, filed in this case, March 2d, 1854, and state whether you are acquainted with any of the signatures which appear thereon; if so, which of them, and whether they are genuine or not?

Answer. I am acquainted with the signatures of Manuel Micheltorena, Manuel Jimeno, and Francisco Guerrero; I lived fourteen ~~months~~ years in the same town with Micheltorena, and eight or ten years with Manuel Jimeno, during which time I was in the habit of frequent official intercourse with them and often saw them write. During part of the time I was United States Consul for California. I have no doubt of the genuineness of the signatures of the said Micheltorena and Jimeno on said document. I am not so familiar with the signature of Francisco Guerrero, but to the best of my knowledge and belief his signature on said document is genuine.

Question by same. Did you know Francisco and Ramon de Haro, and whether they held or claimed any land in the neighborhood of the Mission Dolores, and if so, what land?

A. I know Francisco, the father, and that he had several sons, and I know, from common report, prior to the occupation of the country by the Americans, that they owned some land near said Mission, but I do not know what lands they were.

Questions by the United States Law Agent.

Question. Did I understand you to say that it was the father, or the sons, that owned land near the Mission?

Answer. I can only say it was the de Haro family.

Question by same. Were you acquainted with the business habits of Governor Micheltorena, and his manner of issuing grants, if so, state what they were?

A. I was. He was a man of attentive business habits, and was careful and particular in his manner of issuing grants, more so, I think, than any Governor of California, except Governor Figueroa, for the last twenty years. The usual steps in issuing grants of land by him was, first, a petition by the applicant, which was referred by the Governor to the local authorities of the place where the land was situated. And, upon a report from them, that it was vacant, the grant was usually issued. The grant was sometimes drawn up by the Secretary, and sometimes by individuals. He did not pay much attention to the conditions if the main import

of the grant was embodied in it; a short record of the grant was generally entered in the Book of Records, the other documents on which the grant was founded were generally filed away in the archives.

Question by same. How many grants have you known Micheltorena to make?

A. It is a difficult question to answer. The grants which have come under my observation, or of which I have had knowledge in any way would, probably, exceed a hundred, and may, probably, amount to three or four hundred.

Question by same. Have you ever known a grant to be issued, of which no record was made?

A. I do not know, as I was not an officer of the Mexican Government; but I believe such a record was always supposed to be made.

Question by same. Who was Micheltorena's Secretary in 1844?

A. Manuel Jimeno was the public Secretary, and Rafael Sanchez was his Private Secretary.

Question by same. Who made the records of the grants during that year?

A. The Secretary, Jimeno.

Question by same. What was his business capacity? Was he an accurate and attentive officer?

A. He was a business man, and very attentive to his official and private business.

Question by same. Are you acquainted with the rubric of Micheltorena, if so, state whether you have examined his rubric on the document hereinbefore referred to, and is it genuine?

A. I am acquainted with it; I have examined that on said document, and I am satisfied it is genuine, as also that of Castañares.

Question by same. Where did Guerrero live in 1844?

A. I think he lived in Mission Dolores, and spent a good deal of his time in this place; I have known him fifteen years or more. He is now dead.

Question by same. Did you ever see Guerrero write?

A. I have seen him write often, and have corresponded with him.

Question by Claimants' Attorney.

Question. Under the usage and custom of Micheltorena and the other Governors of California, what was considered a sufficient occupation of a grant of land by the grantee?

The above question objected to by U. S. Law Agent, because it is an attempt to prove a matter of law by parol testimony.

A. Claimants, on getting a grant of land, generally went to work

either to build or stock the land, and some instances by cultivation, but not often, as it was almost impossible to carry the produce to market. As a general thing, they stocked it with cattle and horses. On many farms the servants had small patches or gardens for their own consumption; on others nothing. It was a very rare thing for the proprietors of the large tracts to live in them; they generally lived in the towns. And if they had been inclined to live on them, it would have been unsafe, on account of the Indians. In some cases, when the grantee did nothing with the land, he went to the Governor and surrendered it. Some grants were obtained neither for stock nor agriculture, but for cutting timber and lumber. I do not know what was required by the Governor. I know them never molested when the land was properly stocked. In some cases an individual would have two or three different ranches stocked with cattle.

Question by same. What was the requirement of the Governor as to the personal occupancy of a farm, as he must have seen that many of the owners of such farms lived in towns with their families, except when they would go out to spend a few months in the summer?

Question by same. What was the usage and custom of the Governors in making grants in compensation for services rendered to or money due by the Government?

A. It was a very common occurrence to grant ranchos to men for government services, civil and military, though more frequently military services. I have known personally of several grants of that description, and I have heard of grants being made for money due from the government. I recollect one instance of such a grant under the Mexican authority, which came under my observation.

Question by same. State what agency you had in the preservation of the archives of California?

A. About the middle of August, 1846, when the Americans took possession of the City of the Angels, there were no government archives to be found. The true archives were found in the municipal offices, but much scattered and destroyed. A person named Luis Vignes then lived in the Pueblo of Los Angeles, who, being a Frenchman and a neutral, and having very large buildings, both Californians and foreigners had placed in his buildings almost one hundred trunks. These he showed me. He told me that the Departmental archives were in boxes and trunks in his building. He told me he was under a good deal of fear and apprehensive on account of it. That if he told Americans of it, and the Mexicans retook the country, it would be an injury to him, as Commodore Stockton had published a proclamation forbidding the keeping or

concealing of any public property. He was afraid not to inform them. He asked my advice as an old acquaintance what to do about it. I advised him to place them all together, so that they could easily be recognized; and in case any officers or soldiers came and made a demand or search for them, to let them take them away. I then went to Commodore Stockton or Colonel Fremont, and got some armed men, and took possession of them, and delivered them to Colonel Fremont. They had been packed up apparently in a hurry, but were in pretty good order.

Question by U. S. Law Agent.

Question. Do you know of the loss of any of the Government archives?

Answer. I do not know of any having been lost. It was supposed at that time that some of the last records under Pio Pico might have been lost, and other losses may have occurred since.

Question by same. Look at the document heretofore shown you, marked Exhibit C, No. 1, and state whether in your opinion the first and second pages of said document, and the signatures of Manuel Micheltorena and Manuel Jimeno thereon are or are not written by the same persons, and with the same pen and ink?

A. I think they are not. I think the signature of Micheltorena is lighter than the rest of the document. The signature of Manuel Jimeno might have been written with the same ink.

Question by same. Have you ever seen a document written in 1844, upon which the writing appeared as dark, or had as fresh an appearance as that on the paper above referred to?

A. I cannot tell.

Question by same. Look at the document now shown you, marked H. I. T., No. 1, annexed to the deposition of William A. Richardson, filed in this case, and compare it with the document before referred to, and state which has the oldest appearance?

A. Of the two the document marked H. I. T. looks the oldest.

Question by same. Did you ever know a document in California written four years ago which has as fresh an appearance as the first-mentioned document?

A. I cannot say.

Question by same. Look at the first-mentioned document, and state whether the endorsement made thereon by the Secretary of this Board does not appear to be written about the same time as the body of the document?

A. I cannot tell. THOMAS O. LARKIN.

Sworn to and subscribed before me March 7th, 1854.

R. AUG. THOMPSON, Commissioner.

Filed in office March 7th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 4, page 29. GEO. FISHER, Secretary.

Deposition of C. S. de Bernal.

UNITED STATES LAND COMMISSION,
San Francisco, March 9th, 1854.

On this day, before Commissioner R. Aug. Thompson, came Carmen Sibrian de Bernal, a witness on behalf of claimants, Josefa de Haro et al., Case No. 101, who, after being duly sworn, deposed as follows, her testimony being interpreted by the Secretary. Present—V. E. Howard, counsel for claimant, and J. H. McKune, United States Law Agent. Witness states her name Carmen Sibrian de Bernal; her age forty-nine; and her residence Mission Dolores, California.

Questions by Claimants' Attorney.

Question. Were you acquainted with Francisco and Ramon de Haro?

Answer. I was.

Question by same. Do you know of their claiming and occupying any land in this country, and if so where was it situated?

A. I know of their claiming and occupying a tract of land, being a Potrero situated near the Mission Dolores.

Question by same. State, if you know, some of the landmarks and limits of said tract of land?

Answer. On the side next the city of San Francisco it is bounded by the estero or estuary of the Mission, and on the opposite side by my rancho and an estuary on the same; my rancho is called the Potrero Veijo. On another side by the bay of San Francisco; on the other side by the ditch by which it is enclosed.

Question by same. How long have you known said tract of land, and how far do you reside from it?

A. I have known it two years, a little more or less; I lived on my rancho adjoining it until I went to reside in the new house on my rancho, and afterwards at the Mission, where I have lived ever since.

Q. Have you ever known said Potrero to be occupied; if so, by whom and in what manner?

A. I have known it to be occupied by Francisco and Ramon de Haro, with cattle and horses, inclosures, a corrall, and a small wooden house; it was all enclosed.

Question by same. About what year did their occupation commence, and how long did it continue?

A. Their occupation commenced about ten or eleven years ago, a little more or less; I cannot remember precisely. It is still occupied by the inclosures still being there; they had rented it.

Question by same. Are Ramon and Francisco de Haro living or dead, and if dead, when did they die?

A. They are dead; they were killed at San Rafael by the Americans in the revolution.

Question by same. Are you acquainted with Josefa, Natividad, and Prudencia, Charlota, Rosalia, Alonzo, and Candelaria de Haro, and if so, state whose children they are?

A. I am acquainted with them; they are the children of Don Francisco de Haro the elder.

Question by same. What relation were these children to Ramon de Haro and Francisco de Haro the younger?

A. They were brothers and sisters to the last mentioned, Ramon and Francisco de Haro. They have no others living.

Question by same. State if you know anything of the marriage of Francisco de Haro the elder, and if so, who did he marry?

A. He was married to Emilanea Sanchez.

Q. Is Francisco de Haro and wife living or dead, if dead, when did they die?

A. They are both dead; the wife died first, about ten years ago, and the husband, I think, about four or five years since.

Question by same. How long have you been acquainted with the family?

A. I have known them ever since the marriage of Don Francisco de Haro and Emilanea Sanchez.

Cross-examined by U. S. Law Agent.

Question by same. In what year, where, and by whom was said marriage solemnized?

A. It is about thirty-two years since said marriage took place; it was solemnized at the Mission Dolores either by Padre Tomas Estenaga or Padre José Allmera, I do not certainly recollect which; it was the Padre of said Mission at that time.

Question by same. Where were you living at the time, and were you present at the ceremony?

A. I was living at San Francisco at the time, and was present at the ceremony.

Question by same. In what year, and where did you first know Ramon and Francisco de Haro the younger?

A. I first knew them at the Presidio of San Francisco; It was then about twenty-seven years since I first knew them, a little more or less.

Question by same. When you first knew them, did they reside with their father, and how long did they continue to reside with him?

A. They did, and continued to reside with him until their death.

Question by same. Where did you reside during the period that you knew Ramon and Francisco the younger?

A. I lived on my rancho during that time.

Question by same. State all the acts of occupation which you know were done by Ramon and Francisco de Haro the younger, on the Potrero above spoken of?

A. They occupied by cattle and horses, and with a small wooden house which they built, with a corral, and by enclosing it.

Question by same. How many cattle and horses did they place on it, and in what year?

A. They placed on it the first year about three hundred head of cattle and a band of mares, and about forty tame horses.

Question by same. Did not the cattle and horses spoken of in your preceding answer, belong to Francisco de Haro, Senior?

A. They belonged to him, but he gave them to his sons that they might put them there nearer the Mission.

Question by same. How do you know that Francisco de Haro gave these cattle and horses to his sons?

A. Because they passed by my house on their way to the Potrero; my house was on the main road.

Question by same. How do you know that they were not ranched on the Potrero for Francisco de Haro, Senior?

A. I know that his sons had petitioned for the Potrero, and I saw them take the stock there, but I do not know on whose account it was. When they passed my house I asked them where they were going with the stock, and they told me that they were going to take it to their rancho; that their father had given it to them to take away; that is all I know in relation to his having given it to them.

Question by same. Did not all persons connected with the Mission have the privilege of pasturing on the Potrero during the time the de Haros occupied it?

A. They had not the privilege without the permission of the de Haros.

Question by same. What is the form of what was then known as the Potrero, and as claimed and occupied by the de Haros?

A. It was all enclosed. I do not know whether it was round or square, or what was its form.

Question by same. Do you know the cardinal points of the compass?

A. I do not know any thing about them.

Question by same. How often have you seen Ramon or Francisco de Haro, Jun., on the Potrero?

A. I have seen them there very often; I cannot tell how many

times; they frequently came from their Potrero to mine to take their meals.

Question by same. In what year was the house of which you spoke, built on the Potrero?

A. It was built about ten or eleven years ago, a little more or less; it was built by Ramon and Francisco de Haro; I saw them engaged with some Indians in building it.

Question by same. How long were they engaged in building it?

A. I do not know.

Question by same. How far was your house from the one you spoke of?

A. Perhaps a mile, a little more or less.

Question by same. On what part of the Potrero was the house built?

A. It was nearer my house than the Mission, and on the side next to mine; I cannot tell how many varas it was from the stone wall; it was near the corral; the house was on the inside of the enclosure; the corral was on the side next to San José, and the house on the side next to San Francisco.

Question by same. What was the size of the house, and of what material was it built?

A. It was about seven or eight varas square; it was built and covered with wood.

Question by same. How long did that house remain there?

A. When I left my Potrero some five or six years since, to go and live in the new house I had built on my rancho, the house was still standing there.

Question by same. Have you seen the Potrero within a year past, and is the house still standing there?

A. I have not been on the Potrero within a year, nor since I left my Potrero; I have seen it from a distance; there are now a number of houses on it; I do not know whether the house before-mentioned is standing or not.

Question by same. What is the distance from the new house you went to when you left your Potrero, to that above-mentioned as built by Ramon and Francisco de Haro?

A. It is about two or three miles; it is not in sight.

Question by same. In what direction is your house from the said house?

A. In the direction of San José.

Question by same. Have you ever seen said house since you moved into your new house?

A. I have not.

Question by Claimant's Counsel.

Question. What was this part of San Francisco called fifteen or twenty years ago?

A. It was called Yerba Buena.

Question by same. What was then known as San Francisco?

A. The Presidio and Port of San Francisco.

Question by same. At which of these places or where did you reside when the marriage of Francisco de Haro, Senior and his wife took place?

A. In the Presidio de San Francisco.

CARMEN S. DE BERNAL.

Sworn and subscribed before me March 9th, 1854.

R. AUG. THOMPSON, Commissioner.

Filed in office March 9th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 4, page 33. GEO. FISHER, Secretary.

Deposition of G. Briones.

UNITED STATES LAND COMMISSION,
San Francisco, March 18th, 1854.

On this day, before Commissioner R. Aug. Thompson, came Gregorio Briones, a witness in behalf of the claimants, Josefa de Haro et al., Case No. 101, who, after being duly sworn, deposed as follows, his evidence being interpreted by the Secretary. (Present V. E. Howard, counsel for claimants, and J. H. McKune, United States Law Agent.)

In answer to question, witness states his name is Gregorio Briones; his age fifty-six years, and his residence in Marin county, California.

Questions by Claimaints Attorney.

Question. How long have you been acquainted with the Mission Dolores?

Answer. I have known it for near forty years.

Question by same. Are you acquainted with the signatures of Manuel Micheltorena, Manuel Jimeno, Juan Nepo. Padilla, and Francisco Guerrero, and your means of knowledge?

A. I know no signature but my own.

Question by same. Look at the paper marked Exhibit C, No. 1, Thompson Campbell filed in this case March 2nd, 1854, and state whose is the last signature to the document purporting to be a certificate of judicial possession executed by Juan Nepo. Padilla.

A. The last signature to said document is my own.

Question by same. At whose request did you sign the same?

A. I did it at the request of Juan Nepo. Padilla, the Alcalde, who had solicited me to accompany him in the measurement of the land.

Question by same. What land was it and for whom was it measured?

(Question objected to by Law Agent, because it is an attempt to prove the contents of the paper which is exhibited and speaks for itself.)

A. The land had previously belonged to the Mission Dolores and s known by the name of Potrero Nuevo, and was measured for Francisco and Ramon de Haro, Jr., both now deceased.

Question by same. Did you go upon the land at the time the judicial possession was given; if so, state how the land was measured?

(Objected to by Law Agent, because the first clause of the question is leading, and the second assumes a fact to be true which is not proven.)

A. I was upon the land at that time; the first line was measured from the entrance of the enclosure to the bank of the bay; the next line was measured from an Estuary on this side of the Mission to another Estuary to the south; those were the only measured and ran across each other.

Question by same. State how the land of which judicial possession was then given was bounded on all sides?

A. On the side next the road to the Mission it was bounded by a stone wall, and on the other sides it was bounded by the bay and the Estuaries.

Question by same. Into what do the Estuaries of which you speak empty?

A. Into the Bay of San Francisco.

Question by same. State if you recollect who was present at this judicial survey?

A. The Judge Juan Nepo. Padilla, Francisco Guerrero, Josè Cornelio Bernal, and myself; the two interested parties and the Indians were also present.

Question by same. State if you recollect the month and year when said possession was given.

A. I think it was in the year 1845; I do not recollect the month.

Question by same. Was your signature on the paper shown you and identified by you, executed on the same day that the judicial possession was given?

(Objected to by Law Agent as leading.)

A. I signed it in the same afternoon of the same day.

Question by same. State if you know anything of the occupation of said land, and if so, who was it occupied by?

A. When the judicial possession was given, the de Haros had some cattle and horses there; they seemed to be in their charge. I do not know who they belonged to.

Question by same. When did Ramon and Francisco de Haro, Jr., die?

A. They were killed by the Americans at San Rafael about the time of Colonel Fremont's invasion.

Cross-examined by U. S. Law Agent.

Question by same. Where have you resided during the last forty years?

A. For the first eleven years I was a soldier here in San Francisco; I afterwards resided in San Josè; I do not recollect how long after which, I think in 1829, I went to reside on the Rancho of Pinole, near the Martinez, on the opposite side of the bay, and afterwards, I think about fifteen or sixteen years since, I went to Bolinas, in Marin county, where I have resided ever since.

Question by same. How far is Bolinas from the Mission Dolores?

A. It may be about nine leagues.

Question by same. Did the Alcalde Padilla send to Bolinas for you, to act as a witness in making said judicial survey?

A. He did not. I was here at the time on a visit to my sister, Juana Briones, who still resides here in the city.

Question by same. Did you see the paper which you signed given to either of the de Haros?

A. I did not.

Question by same. Who had it when you first saw it?

A. The Alcalde Juan Padilla.

Question by same. Was there a map with it at that time?

A. I did not see one; I only signed the paper.

Question by same. When did you next see the said paper?

A. I never saw it afterwards until I saw it here to-day.

Question by same. Has any person spoken to you in relation to said paper within a year from this time?

A. They have not.

Question by same. Who asked you to come and testify in this case?

A. No one went to my house to solicit me to come here to testify, but being here I was requested by Don Guillermo Richardson to give my testimony.

Question by same. When you came here who came with you, and when did you come?

A. An Indian boy came with me; I left my house on Sunday last; I do not remember what day I arrived here.

Question by same. Have you not consulted with Captain Richardson concerning this claim to the Potrero since your arrival here?

A. I have. Yesterday he requested me that I would come and testify as to what I have seen and knew in relation to the measurement of the land.

Question by same. Did Capt. Richardson inform you what he had testified in the case?

A. He did not. Richardson asked me to come and give my deposition, and I told him I would do so; that was all that was said. This was on yesterday, perhaps about 10 o'clock in the morning.

Question by same. What instrument was used in the measurement of the land, when the judicial possession was given?

A. Nothing was used but a cord made of strings, hide ropes, or whatever we could find for the purpose, tied together. I do not remember how many pieces were tied together nor the length of each or either; neither do I recollect how many varas long the cordel was.

Question by same. Describe in what manner the measurement was made?

A. The measurement was made by one of the de Haros taking one end of the cordel and an Indian the other, and proceeding on horseback; a pole, which they held in their hands, was stuck in the ground for each length of the rope. Francisco Guerrero and José Carnelio Bernal accompanied them and counted the number of cordels.

Question by same. How many lengths of the cordel were counted running the first line?

A. I do not recollect, as the counters kept the account of the number; I took no note of it.

Question by same. What was the form of the land measured?

A. It was narrow and long.

Question by same. Which of the lines ran, the first or the second, was the longest, and what, as near as you can judge, was the difference between them?

Question objected to by claimant's counsel, as an attempt to contradict the official record of the juridical possession.

A. The second line was run the largest, and the first the shortest. I do not recollect the difference between them.

Question by same. Was it three times as long or twice as long?

A. I cannot say; I do not recollect.

Question by same. Was the first line measured from the wall, and if so, how far from Mission Creek?

A. It was from the entrance in the wall. It was not far from the creek. I cannot remember the distance. It is some time since I was there and I can form no correct estimate of the number of varas.

Question by same. Was the first line a straight one from the entrance in the wall to the nearest point on the bay of San Francisco?

A. It was run in a straight line to what was supposed to be the nearest point on the bay.

Question by same. Mark out on paper the relative position of the two lines ran in giving juridical possession.

A. I cannot do it—I am no draftsman.

Question by same. In what part of said land did the lines cross each other?

A. It was not in the centre, it was near to the entrance line.

Question by same. How far was it north of the centre?

A. I cannot tell the distance.

Question by same. Was that cross formed by the two lines before spoken of, north or south of a line drawn east and west through the centre Mission buildings?

(Claimant's counsel objects to the above as irrelevant and unmeaning.)

A. It would be to the south.

Question by same. How far south would it be?

A. I can only say it is to the south. I cannot say what distance.

Question by same. Look at the map contained in the traced copy of the espediente from the archives in the office of the Surveyor-General, filed in this case, and state whether you recognize it as a correct representation of the land of which you have spoken?

A. I know very little about maps; I would recognize it by the esteros and the bay, but I know nothing about the hills and roads and other marks on said map.

Question by same. What do the red lines on said map represent?

(Objected to by claimant's counsel.)

A. I do not know what they represent. I know nothing about maps.

Question by same. Supposing said red lines to represent the boundary of said land, would they correctly delineate the form of the Potrero?

(Objected to by claimant's counsel.)

A. The lands, as I saw them measured, was longer between the two esteros than it was from the bay to the other boundary.

Direct Examination Resumed.

Question by claimants' counsel. When was the document marked Exhibit C, No. 1, before referred to, first shown [to you] in this Commission, and by whom?

A. It was first shown me here to-day, when giving my testimony.

Question by same. Did you not see it in the office of the Commission some previous day?

(Objected to by Law Agent; first, because it is leading; and secondly, because it tends to contradict claimants' own witness.)

A. I did not. GREGORIO BRIONES.

Subscribed and sworn to before me, March 19th, 1854.

R. AUG. THOMPSON, Commissioner.

Filed in office March 18th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 4, page 65. GEO. FISHER, Secretary.

Deposition of Manuel Castro.

UNITED STATES LAND COMMISSION,
SAN FRANCISCO, March 13th, 1854.

On this day, before Commissioner R. Aug. Thompson, came Manuel Castro, a witness on behalf of the claimants, Josefa de Haro *et al.*, case No. 101, who, after being duly sworn, deposed as follows, his evidence being interpreted by the Secretary.

Present, V. E. Howard, Esq., attorney for claimant, and J. H. McKune, U. S. Law Agent.

Witness states his name is Manuel Castro; his age thirty-two years, and residence Monterey county.

Questions by Claimants' Attorney.

Look at the document now shown you, marked Exhibit C, No. 1, Thompson Campbell, filed in this case, and state whether you are acquainted with any of the signatures which appear thereon, and if so, which of them, and whether they are genuine or not.

A. I know the rubrics of Micheltorena and Manuel Castañares. Have known the signatures of Manuel Micheltorena, of Juan Nepo. Padilla and of Francisco Guerrero; I have seen them all write. I believe all their signatures on said document to be genuine. I have not seen Gregorio Briones write, but I have seen letters from him, and from the resemblance of his signature on said document to those I have seen purporting to be his, I believe it to be genuine. I also believe all the rubrics to be genuine except that of Briones; as to which I cannot speak with certainty, though I believe it to be so.

Question by same. Did you ever see said document before, and if so, state when, where and under what circumstances you saw it.

A. I have seen it before I saw it here, in Yerba Buena, in November, 1845, and in the same month and year I saw it again at the Mission Dolores. In the same year and month, I being Prefect of the District of Monterey, came to Yerba Buena and other ports on an official visit, and at that time I was with the Sub-Prefect, Don Francisco Guerrero, in the part of the Custom House which he occupied as his office, and then he showed to me said title, he being interested in behalf of the de Haro family, with which he was connected by marriage. And asking my opinion of said title, I then gave him my opinion, and told him the title seemed sufficient; afterwards we went to the Mission Dolores, where the subject was again matter of conversation, and I then saw said document a second time.

Question by same. Do you know anything of the occupation of the land granted by said title, if so, state what the occupation was, by whom, and when?

A. In the same month and year before spoken of the de Haros had it occupied with cattle and horses. They had also a corral.

Question by same. What was the names of the de Haros to whom you refer in your preceding answer?

A. I referred in general to the family of the de Haros, but particularly to Ramon and Francisco, who were the owners of the land.

Question by same. Do you know whether juridical possession of said land was ever given or not?

Answer. At the period before mentioned Guerrero told me that the juridical possession had been given, and asked me if it was convenient that the Alcalde of Yerba Buena should continue to give juridical possession. I told him that he could do so.

[The above answer, so far as founded on hearsay, objected to by U. S. Law Agent.]

Question by same. When were you appointed to the office of Prefect, and by whom?

A. I was appointed in the year 1845, in one of the months of June, July, or August, I do not recollect which, by Governor Pio Pico, in conformity with a resolution of the Departmental Assembly. I have my commission, which is now at Monterey.

[The latter clause of this answer objected to by the U. S. Law Agent.]

Question by same. Have you any note or memorandum in writing by which you know that you were in Yerba Buena in November, 1845?

A. I have no note or memorandum, but there are official acts then performed, while I was there at that time.

Question by same. What were those official acts?

A. First, some official conferences, verbal and in writing, in relation to the purchase which Don Juan Sutter made of the Presidio Ross of the American Russian Company, which was recommended by the Supreme Government of Mexico. Also, in relation to a proceeding against Francisco and Ramon de Haro and others, for an assault on Mr. Leoy, captain of the American vessel Tasso.

Question by same. Before what tribunal was the last named proceeding had?

A. It was had before the Alcalde or Justice of the Peace for the jurisdiction of Yerba Buena. There were several persons who acted in that capacity. I do not recollect the particular one before whom the case was tried. I do not recollect with certainty the names of the persons then acting in that capacity, but I think that Jesus Noé or José de la Cruz Sanchez were so acting at that time, and there were others who so acted in their absence, but I do not recollect their names; but their names may be ascertained by reference to the papers in said cause, and also to the communications relative to the appointment of Alcaldes.

Question by same. To what communications do you refer, from whom and to whom?

A. I, as Prefect, proposed or appointed the persons for the offices of Justices of the Peace or Alcalde, to the Governor, which were subsequently approved by him, and these are the communications to which I referred.

Question by same. Were these communications dated or executed at Yerba Buena?

[Question objected to by claimant's counsel.]

A. They were written and dated at Monterey.

Question by same. What persons did you nominate for either of these offices at Yerba Buena?

A. I cannot tell without referring to the documents.

Question by same. Are those the only documents by which you know you were at Yerba Buena in November 1845?

A. I again refer to my answer in relation to the American Russian Company, the proceedings against the de Haros, and a number of others that I don't now recollect. In addition I now recollect that an official communication from the Sub-Prefect Guerrero to me may exist, which will accredit my visit to this point. I also now recollect a controversy between William A. Richardson and the widow of Read in relation to a boundary. The parties submitted their titles and documents to me as Prefect, and I gave them a written opinion on the matter, and recommended them to settle it in accordance with it. This was in November or December 1845.

Question by same. Was there any official act of your own, as Prefect, done at that time of which a record was made?

A. There may be among my papers some notes of the leases already referred to, one contract which I made with the American Russian Company may exist among them.

Question by same. How often did you visit Yerba Buena while acting in the capacity of Prefect?

A. Some four or five times in the month of November, and perhaps in December 1845. I first came from Monterey, second from the Mission Dolores, and afterwards from Sonoma.

Question by same. At what time did you come from Sonoma?

A. In November or December 1845. I also visited Yerba Buena a fourth time from the Mission Dolores. I stated I came four or five times, that I recollect, and may have been there at other times. I kept no account of the visits.

Question by same. Were you ever at Yerba Buena while you were Prefect, except in the months of November and December 1845?

A. I do not recollect that I ever was there while Prefect at any other time except in these months.

Question by same. How long were you Prefect?

A. I do not recollect the precise time my service as Prefect commenced, or when it terminated, without reference to my commission. I think it commenced in July or August 1845, and terminated in November or December 1846.

Question by same. What route did you travel from Monterey to Yerba Buena on your first visit, above referred to?

A. I came by San Juan, San José, the Pulgas and the Mission Dolores, to Yerba Buena, where I attended two balls.

Question by same. Who accompanied you to Yerba Buena on the occasion last spoken of?

A. The Commandant General, Don José Castro. Don Andres Castillero, Commissioner of the Supreme Mexican Government, came as far as Santa Clara, and Don Francisco Arce accompanied me with an escort from Monterey to Sonoma. I also recollect that Don Juan Castañada arrived at Yerba Buena with me, but I do not recollect from what part on the road he came.

Question by same. Did you come from San José to Yerba Buena in one day?

A. I do not recollect how many days I was on the road.

Question by same. Do you recollect at what hour of the day you arrived at Yerba Buena?

A. I do not recollect.

Question by same. At whose house did you stop on your arrival at Yerba Buena?

A. I do not recollect.

Question by same. Can you recollect any one at whose house you staid all night during your first visit?

A. I sometimes staid all night at the house of Robert Ridley.

Question by same. Was it during your visit that the difficulty with the de Haros and the captain of the ship Tasso, before spoken of, occurred?

A. I was at Monterey when the difficulty occurred.

Question by same. How did the matter come before you for adjustment?

A. Notice was given to me in Monterey in relation to it. Don Thomas O. Larkin, as American Consul, communicated the matter to me, and when I came here I gave orders to the Judges to take cognizance of the said cause.

Question by same. Were you present at the trial; if so, where was it held?

A. The cause occupied some considerable time, and during its progress I was frequently consulted in relation to it. According to the practice under the Mexican Government it was not the duty of the Prefect to be present at these investigations or trials. I was not present. It was held in the house where they held their courts.

Question by same. You state you were frequently consulted during the progress of the examination. Who consulted you?

A. The judges, as I have already said. I do not recollect who they were. The Sub-Prefect, Guerrero, consulted me, and thus informed the judges of the result.

Question by same. To what judges did you give the order to proceed against the parties, as stated in a former answer?

A. As I have already stated that I do not recollect the names of all the judges, and that to the best of my recollection José de la Cruz Sanchez or Jesus Noé was one of them.

Question by same. Was the difficulty between the de Haros and the captain of the ship settled during your first visit to Yerba Buena?

A. It was not.

Question by same. Were you personally acquainted with the de Haros, Ramon and Francisco, and when did your acquaintance commence?

A. I first became acquainted with them in Monterey during the time of Micheltorena.

Question by same. Did you see either of them during your first visit to Yerba Buena?

A. I did.

Question by same. Was it before or after you saw the title

marked Exhibit C, No. 1, spoken of in the preceding part of this deposition?

A. I do not recollect whether I saw them before or after.

Question by same. At which of your visits to Yerba Buena did you first see said document.

A. It was after my return from Sonoma.

Question by same. Did any one come with you from Sonoma, and if so, who?

A. I did not come alone. Don Mariano Vallejo accompanied me to Petaluma. I do not recollect who came with me to Yerba Buena, but it is probable I was accompanied by some of the same escort who went to Sonoma with me.

Question by same. How long were you absent from Yerba Buena, in your visit to Sonoma?

A. I do not recollect. Perhaps from ten to fifteen days.

Question by same. How long were you in Yerba Buena before you went to Sonoma?

A. I was here in November; I cannot remember how many days.

Question by same. Was it more or less than a week?

A. I do not recollect.

Question by same. In whose possession was the document marked Exhibit C. No. 1, when you first saw it?

A. It was in the posseesion of Don Francisco Guerrero.

Question by same. Did you first see it at Yerba Buena, or at the Mission Dolores?

A. I first saw it in Yerba Buena, and afterwards at the Mission.

Question by same. Who were present when you first saw it?

A I do not recollect.

Question by same. At whose place in Yerba Buena were you, when it was first shown you?

A. It was at the Custom House building.

Question by same. Did Guerrero produce it from other papers about his person?

A. I do not recollect whether it was among other papers or not, as Sub-Prefect, and my subaltern, he was frequently in the habit of showing me papers, that I might inform myself of their contents.

Question by same. How long was it, from the time you first saw said document, until you again saw it at the Mission?

A. The last time I saw it was about the last of November, or part of December, 1845, being between the time of my return from Sonoma and my departure for Monterey.

Question by the same. At what place at the Mission did you see it, and who were present?

A. I saw it at the house of Guerrero. Guerrero was present, and some of the smaller members of his family.

Question by same. When you saw the paper a second time, did Guerrero take it from papers about his person, or from a desk?

A. Guerrero took it from his pocket; I do not know whether it was among the papers or not.

Question by same. How long did you have it in your possession the second time you saw it?

A. I do not know how long I had it while I was reading it; I do not know whether I handed it back to him, or laid it on the table.

Question by same. How many times did you read the document while you were Prefect?

A. I only recollect twice; once in Yerba Buena, and once at the Mission. I do not mean to say I read all the document. I did not read all of the authentication of the stamp, or the whole of the conclusion.

Question by same. What other papers, if any, shown you by Guerrero, did you read during your said visits to Yerba Buena?

A. I certainly read others, but besides these already mentioned, I do not recollect them.

Question by same. Look at the paper now shown you, marked Exhibit No. 1, annexed to the deposition of W. A. Richardson, filed in this case, and state whether that paper was shown you by Guerrero during your said visits.

A. I do not recollect it.

Question by same. When was your attention next called to the document marked Exhibit C. No. 1, first shown to you after you saw it at the house of Guerrero?

A. After the occasion last mentioned, my attention was never called to said document, until I saw it here, in the office of the United States Land Commission, not many days ago.

Question by same. Look at the paper now shown you, marked Exhibit No. 1, annexed to the deposition of W. A. Richardson, and state whether the signatures of Manuel Jimeno and Manuel Micheltorena, which appear thereon, are their genuine signatures?

A. The said signatures, where they first occur on said document, and the second, of Jimeno, are, in my opinion, genuine. I have some doubt of the genuineness of the last signature of Micheltorena; the last signature, I think, of Jimeno, is genuine.

Question by same. Are you well acquainted with the signature of Manuel Jimeno, if so, state whether he usually makes the letter M, at the commencement of his name, with a mark, *U*, thus, or with a point, *J*, thus?

Objected to by claimant's Attorney.

A. I am well acquainted with the signature of said Jimeno. He does not commence his "Ms" uniformly in either of the modes indicated.

Question by same. Make an M as near as you can, in imitation of the M usually made by Manuel Jimeno in signing his name.

A. I can make my own letter, but I cannot imitate others; I do not wish to make the attempt, and therefore decline it.

Question by same. Look at the signature of Manuel Jimeno on page 2 of document marked Exhibit No. 1, annexed to the deposition of William A. Richardson, and compare it with his signature on document marked Exhibit C, No. 1, Thompson Campbell, and state which of the two shows his usual mode of making the letter M at the commencement of his name?

A. I have not paid sufficient attention to his signature to say which is his most usual mode of making the letter M; I believe there was always some little difference in his signatures, according to his pulse or nerves; I recognize them both as genuine.

Question by same. How many documents have you now in your possession with the signatures of Manuel Jimeno attached to them, and do you know of any one which has the letter M made as it appears at the commencement of his name on the document last mentioned in the preceding question?

A. I do not know how many such documents I have, nor can I specify any in which the M is made in the manner indicated on either document. It may be found made in both forms.

Question by same. Look on the said document marked Exhibit C, No. 1, Thompson Campbell, and state whether you have ever seen the letter L in the contraction of the first name of Manuel Micheltorena made in the form in which it there appears?

A. I do not suppose I have ever seen it exactly as it appears there, as it may be a little smaller or a little larger; Micheltorena did not always sign his name alike; sometimes he wrote a larger and sometimes a smaller hand.

Question by same. By what particular mark or description do you recognize the document marked Exhibit C, No. 1, as the one shown me by Guerrero in November, 1845?

A. I recognize it by the stamps, the rubrics and the signatures; and moreover, from my recollection of the substance of the document itself, as a grant to the de Haros.

Question by Claimant's Counsel.

Under what law or authority did you nominate persons to the Governor for the offices of Justices of the Peace or Alcalde?

A. By authority of a decree of the Departmental Assembly,

made in conformity to organized law of the Mexican Republic of 1842.

(The above question and answer objected to by the U. S. Law Agent, as referring to matters of law and not of fact.)

MANUEL CASTRO.

Sworn to and subscribed before me, March 13th, 1854.

R. AUG. THOMPSON, Commissioner.

Filed in office March 18th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, Volume 4, page 57. GEO. FISHER, Secretary.

Deposition of Juan Padilla.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA, }

San Francisco, March 30th, 1854.

This day, personally came before Peter Lott, a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Juan Padilla, a witness on behalf of the claimant in case No. 101, on the docket of said Board, in which Josefa de Haro *et al.* are claimants, and the said Juan Padilla being duly sworn, on oath deposed in Spanish, which was interpreted into English by the interpreter for said Board, as follows, to wit: (The U. S. Law Agent is present.)

Questions by V. E. Howard, Esq., Attorney for Claimants.

Question 1. What is your name, age and present place of residence?

Answer. My name is Juan Padilla, my age 51 years, and my residence Los Angeles, California.

Q. 2. What office, if any, did you hold in Yerba Buena in the year 1845?

A. I was a Justice of the Peace in Yerba Buena in the year 1845.

Q. 3. Are you acquainted with any land in the neighborhood claimed by Francisco and Ramon de Haro, and if so, state where it was situated?

A. I am acquainted with land claimed by them. It is situated near the Mission Dolores, on the eastern side, towards the bay of San Francisco.

Q. 4. Do you know anything of juridical possession of that land having been given, if yea, state all you know about it?

A. I know of possession having been given; Francisco and Ramon de Haro presented themselves to me, as Alcalde, soliciting

the juridical possession of a tract of land called el Potrero, in virtue of a title from the Governor of the Department, which accredited the concession thereof to these persons. Accordingly I went and put them in possession, according to the laws in such cases.

(The United States Law Agent objects to this last question and answer, on the ground of its being secondary evidence, the record being the first proper proof.)

Q. 5. Look at the paper shown you marked Exhibit C, No. 1, filed in this case March 2d, 1854, and say if you ever saw the same before, if yea, when and under what circumstances?

A. I have seen this document before. It was presented to me by the claimants named when they applied to me for the juridical possession spoken of.

Q. 6. Whose signature is that attached to the act of juridical possession?

A. It is my own genuine signature. I wrote the paper myself to which my name is signed.

Q. 7. Are you acquainted with the signatures of Manuel Micheltorena and Manuel Jimeno, if yea, state whether their signatures on this document are genuine, and your means of knowledge?

A. I do know their signatures. I do not recollect to have seen them write these signatures of their names on this paper; I considered them genuine and acted upon the paper accordingly, and I still believe them to be genuine.

Q. 8. Do you recognize the signatures of the assisting witnesses on the paper?

A. I do. They were signed by them respectively, in my presence, as Justice, at the conclusion of the giving the possession mentioned.

Q. 9. Do you know anything of the occupancy of this land of which you gave juridical possession; if so, state what you know respecting it?

A. I know that Francisco and Ramon de Haro occupied it previous to my giving juridical possession. I do not know how long they continued there after that.

Q. 10. How did they occupy it at the time of giving the juridical possession by you?

A. They had a small house on it and some oxen and horses.

Q. 11. Did you see any cultivation there at that time?

A. I do not recollect to have seen any.

Q. 12. Who lived in the house you speak of at that time?

A. The servants of Francisco and Ramon de Haro.

Q. 13. Were Francisco and Ramon de Haro married then?

A. I do not know.

Cross-examined by U. S. Law Agent.

Question 1. Was you a married man in 1844, and where did you then reside?

Answer. I was married in 1844, and lived in Los Angeles.

Q. 2. From what time to what time did you live in Los Angeles?

A. I lived there from 1849 to the present time.

Q. 3. Did you ever live at Yerba Buena?

A. Yes, from 1841 to 1846 I lived on the corner of the Plaza; I had no family there. The house in which I lived belonged to a man named Vioget; my servants and clerks (dependientes) lived with me; one was Nicolas Frias. I had some Indians as servants, and a Peruvian cook; I do not recollect their names; I lived in that house the first two years; I think I lived there till 1845; after that I lived in a house further up the hill, belonging to Don Jesus Noé.

Q. 4. How many buildings were there within a half mile of your residence when you lived in Yerba Buena?

A. There were perhaps fourteen or fifteen.

Q. 11. Can you name the owners of such houses?

A. Juan Vioget was one, Guillermo Liedsdroff another, Guillermo Rey, Juan Fuller, Jesus Noé, Nathan Spear, Guillermo Hinckley, Victor Prudon, and I cannot recollect distinctly several others. I suppose the houses were occupied by the owners; I think the persons I have spoken of had houses in 1844 within the 200 varas embracing the Pueblo.

Q. 12. When and how did you get your appointment as Alcalde?

A. In the beginning of 1845, by a popular election, according to law.

Q. 13. What month in 1846 did you leave San Francisco?

A. I do not remember exactly.

Q. 14. Where did you live from 1846 to 1849?

A. I lived in Sonoma and different places; I had business over the other side of the bay and was frequently there.

Q. 15. Did you during that time command a company of men of which four fingered Jack was a member?

(This question objected to by claimants' counsel, as irrelevant.)

A. No, I was not a captain, nor did I command a company of men.

Q. 16. What was the nature of your business the other side of the bay, and with whom?

A. My business was such as pertained to my interest, and was with those who were concerned; my business was trading; I had stock over there; houses and mercantile establishments; I had land in Sonoma, a place called Roblar de la Miseria.

Q. 17. Did you ever know Bernardino Garcia?

A. If he lived at Sonoma, I ought to have known him; I cannot precisely say that I know such a man.

Q. 18. While you acted as Alcalde, did you keep a record of your proceedings as such Alcalde?

A. In some cases I did, but in trifling cases I did not.

Q. 19. In how many instances did you as Alcalde, give juridical possession of lands in your official capacity, and to whom did you give it and under what circumstances?

A. The one I gave to the de Haros and one to Juan Martin are the only ones I now distinctly remember; I gave others, which I cannot now remember.

Q. 20. What was your usual mode of giving juridical possession, and how many acts of juridical possession did you ever write on the same piece of paper with the grant?

A. The same mode was usually practiced in the country by measuring the land according to the description in the grant; I sometimes wrote on the same paper with the grant the act of juridical possession; sometimes I gave a certified copy on a separate paper; sometimes there was not room on the same paper, then I wrote it on separate paper, and even when there was room sometimes.

Q. 21. State any one instance in which you wrote the act of possession besides the one in this case, was a separate piece of paper?

A. I do not recollect any other; sometimes my memory does not serve me.

Q. 22. In whose hands did you first see this paper about which you have testified, marked Exhibit C, No. 1?

A. In the hands of Ramon de Haro, when he applied to me for juridical possession at my house.

Q. 23. Did Ramon take it from his pocket, or had he it already in his hand when he came to you?

A. I do not know.

Q. 24. Was it folded up at that time as it now is?

A. I do not know, I paid no attention to that.

Q. 25. Who was present when he came to you with the paper?

A. I do not recollect.

Q. 26. Had the paper ever been folded when you first saw it?

A. I cannot state positively; I naturally suppose it had been folded.

Q. 27. How long was the paper presented to you before juridical possession was given?

A. A very short time.

Q. 27. Did you summon the assisting witness immediately after seeing the grant?

A. I did so as early as practicable; not in the same minute?

Q. 29. Whom did you send to summon the assisting witness?

A. I sent Ramon de Haro, the same who gave me the title; I told him whom to summon; I did not give him the names, but told him to go and hunt two men; I do not recollect whether the assisting witnesses came to my house then; perhaps they did not, but after the juridical possession was given they did come to my house; they came from the ground we measured with me to the settlement; I do not recollect whether it was the same day.

Q. 30. Where were you when you signed this act of juridical possession for the de Haros?

A. In my house; the de Haros and the witnesses were present; one of the de Haros (Ramon) was present, and Francisco Guerrero and Gregorio Briones, whose signatures are on the document; I do not recollect any others that were there.

Q. 31. Did you write the act of possession at that time?

A. Yes.

Q. 32. Did the witnesses sign it immediately after you did at your house?

A. They did.

Q. 33. Was the paper removed from the table when you wrote your signature before they signed it?

A. It was not.

Q. 34. Did you hand the pen to the witnesses with which you wrote, for them to sign their names?

A. I did not give it to them; they took it and signed.

Q. 35. Was it the same pen?

A. I do not know; it might have been the same, or another from the inkstand.

Q. 36. Did the witnesses use the same ink which you did?

A. They signed from the same ink which I signed from.

Q. 37. Have you been familiar with the signature of Francisco Guerrero, and how long, and would you know his rubric if shown to you?

A. I have not been familiar with it; I believe I would know his rubric; I have seen it several times.

Q. 38. Look at the signatures of Francisco Guerrero named in the paper handed you, marked as Exhibit A and Exhibit B to this deposition, and say whether they are genuine?

(Question objected to, because the whole paper is not shown in either case, but that they are two papers sealed up, the envelopes being cut so as to show the signature merely, and that the question is not a legal one to prove a signature.)

A. I cannot say they are genuine, but the letters and rubrics from those of Guerrero, for all I know, they may be an imitation.

Q. 39. Look at the paper shown you, marked Exhibit No. 1, to the deposition of William A. Richardson, taken in case No. 101, H. I. T., filed in this case, and say whether the signatures of Manuel Micheltorena and Manuel Jimeno, where they are written thereon, are their genuine signatures?

A. Those on the second page are the most perfect, and might be the best of my recollection of their signatures. They may all be genuine, I cannot say positively that they are their own writing, because I did not see them sign the paper.

Q. 40. Where were you in June and July, 1846?

A. I do not know; that summer I was perhaps here, and perhaps at Sonoma.

Q. 41. Do you recollect, as a matter of history, that in the summer of 1846 a party of Americans were tied to a tree and mangled to such an extent as to produce their death?

(This question objected to by claimants counsel, as irrelevant and illegal.)

A. I have heard it spoken of; persons were inquiring about it as I was going about there, and I stated it was false.

Q. 42. When, where, and of whom did you first learn it?

(Objected to on the same ground as before.)

A. In the latter part of 1846, and in my return to the part of the country, I was told of this circumstance; I cannot say where I first learned it; I heard it from various persons; I do not recollect the first; I took some pains to inquire about it, and I told such persons as spoke of it that it was false.

Q. 43. Were you not one of the party spoken of who tied the Americans to a tree, and did you not hear of their death before you went to Los Angeles in 1846?

(Objected to by claimants counsel, as irrelevant and indecent. It is here stated to the witness by claimants counsel, through the interpreter, that the question now asked him he need not answer unless he choose so to do.)

A. I was not one of the party. I understood that the persons who did it had formed a company for the protection of their families; a short time after the affair occurred I arrived at the camp of the Californians; I was at the spot where the occurrence took place, soon after the occurrence; the persons then said that this was done by them in defence of their families.

Q. 44. What persons do you mean?

A. I do not recollect who told me, and I am not disposed to answer further about this matter; these things occurred in war, and I think they have nothing to do with the business of lands.

(The Commissioner here informed the witness, that he need not

answer any more questions in relation to this matter, unless he should do so of his own choice.)

Q. 45. State particularly what connection you had with that transaction?

A. I have before said that I do not wish to answer any more on that subject; I have said that all questions which have no relation to the question upon land, it does not belong to me to answer; for this reason I wish to say nothing that I may recollect.

Q. 46. Did you use any map when you gave juridical possession?

A. I was governed by the title, and had a small plat which was used.

Q. 47. Was the map in the paper handed you marked Expediente B, the one you used, and does that map embrace the land you gave the juridical possession of in this case?

A. It appears to me that it is not the one. It may be I do not understand this map. It may be very good, and I do not know whether it embraces the land or not. It has some of the marks of the land, esteros, etc.

Re-Examined by Claimants' Counsel.

Question 1. How was the land bounded of which you gave the juridical possession to the de Haros?

Answer. On the north by an estero called the Estero de la Mission, on the south by another estero, on the west by a stone wall by the side of the Mission Dolores, on the east by the Bay of San Francisco. These are the boundaries which I recollect.

Cross-Examined by U. S. Law Agent.

Question 1. How did you measure them?

Answer. With ropes tied together fifty varas in length.

Q. 2. Where did you begin?

A. We began at the entrance of the stone wall and measured to the bay, a distance which we estimated as about 3,000 varas, next from the estero on the north to that on the south; we estimated that distance the same as the first one; we measured on horseback and did not measure with great accuracy.

JUAN PADILLA.

Subscribed and sworn to before me on this 30th day of March, A. D. 1854.

PETER LOTT,
Commissioner for taking Testimony, etc.

Filed in office March 30th, 1854. GEO. FISHER, Sec'y.
Recorded in Evidende B, vol. 4, page 130. GEO. FISHER, Sec'y.

Deposition of S. R. Throckmorton.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA, }

San Francisco, April 27th, 1854.

This day personally came before Peter Lott, a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Samuel R. Throckmorton, a witness in behalf of the United States in Case No. 101 on the docket of said Board, and wherein Josefa de Haro and others are claimants. And the said witness being duly sworn on oath deposed in English language as follows, to wit:

[The attorney for claimants is present.]

Questions by the United States Law Agent.

Question 1. What is your name, age, and present residence?

Answer. My name is Samuel R. Throckmorton, my age is forty-five years, my residence is San Francisco, California.

Q. 2. Are you acquainted with the tract of land claimed in this case called the Potrero, if yea how long have you known it?

A. I am. I have known the place between three and four years.

Q. 3. Do you know the parties at present interested in having the claim confirmed? if yea name them.

A. I know of J. W. Brother, H. P. Janes, Payne & [illegible] Richardson, E. L. Beard, John M. Horner, Wm. Care[illegible] K. Garrison, S. R. Throckmorton (myself,) and J. C[illegible] South Carolina, and Isaac McFarren and John C. [illegible] two 2-7ths are owned by two infant heirs of Francisco de Haro.

Q. 4. Look at the paper marked Exhibit C, No. 1, Thompson Campbell, P. L., and say when, where, and under what circumstances you first saw it.

A. I think it was in January or February last past, in the office of Julius K. Rose, where it was handed to me for inspection by E. L. Beard, of San José, when I was requested to ascertain the genuineness of the document if possible. I do not recollect who was present. It is a public office where I frequently go to transact my business with my attorneys.

Q. 5. Did the party from whom you received the paper express any doubt as to its genuineness?

A. He did not.

Q. 6. How long after that did you cause the paper to be exhibited to Gregorio Briones?

A. I went for that purpose to Gregorio Briones when I heard he was in town. I think it was early in March. It was a very

answer any more questions in relation to this matter, unless he should do so of his own choice.)

Q. 45. State particularly what connection you had with that transaction?

A. I have before said that I do not wish to answer any more on that subject; I have said that all questions which have no relation to the question upon land, it does not belong to me to answer; for this reason I wish to say nothing that I may recollect.

Q. 46. Did you use any map when you gave juridical possession?

A. I was governed by the title, and had a small plat which was used.

Q. 47. Was the map in the paper handed you marked Expediente B, the one you used, and does that map embrace the land you gave the juridical possession of in this case?

A. It appears to me that it is not the one. It may be I do not understand this map. It may be very good, and I do not know whether it embraces the land or not. It has some of the marks of the land, esteros, etc.

Re-Examined by Claimants' Counsel.

Question 1. How was the land bounded of which you gave the juridical possession to the de Haros?

Answer. On the north by an estero called the Estero de la Mission, on the south by another estero, on the west by a stone wall by the side of the Mission Dolores, on the east by the Bay of San Francisco. These are the boundaries which I recollect.

Cross-Examined by U. S. Law Agent.

Question 1. How did you measure them?

Answer. With ropes tied together fifty varas in length.

Q. 2. Where did you begin?

A. We began at the entrance of the stone wall and measured to the bay, a distance which we estimated as about 3,000 varas, next from the estero on the north to that on the south; we estimated that distance the same as the first one; we measured on horseback and did not measure with great accuracy.

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Question 1. What is your name, age, and present residence?

Answer. My name is Samuel R. Throckmorton, my age is forty-five years, my residence is San Francisco, California.

Q. 2. Are you acquainted with the tract of land claimed in this case called the Potrero, if yea how long have you known it?

A. I am. I have known the place between three and four years.

Q. 3. Do you know the parties at present interested in having the claim confirmed? if yea name them.

A. I know of J. W. Brother, H. P. Janes, Payne & Dewey, B. Richardson, E. L. Beard, John M. Horner, Wm. Carey Jones, C. K. Garrison, S. R. Throckmorton (myself,) and J. C. Holmes of South Carolina, and Isaac McFarren and John C. McLean, and two 2-7ths are owned by two infant heirs of Francisco de Haro.

Q. 4. Look at the paper marked Exhibit C, No. 1, Thompson Campbell, P. L., and say when, where, and under what circumstances you first saw it.

A. I think it was in January or February last past, in the office of Julius K. Rose, where it was handed to me for inspection by E. L. Beard, of San José, when I was requested to ascertain the genuineness of the document if possible. I do not recollect who was present. It is a public office where I frequently go to transact my business with my attorneys.

Q. 5. Did the party from whom you received the paper express any doubt as to its genuineness?

A. He did not.

Q. 6. How long after that did you cause the paper to be exhibited to Gregorio Briones?

A. I went for that purpose to Gregorio Briones when I heard he was in town. I think it was early in March. It was a very

few days before he gave his deposition in this case. I did not exhibit the paper to him fully but showed him his name on the corner of it and asked him if it was his signature: he said it was. Beyond that he did not examine the paper. I met him casually on the steps of the U. S. Land Commission, and we went together up stairs to the Secretary's office where the paper was. Mr. Fisher, the Secretary, was present, and a clerk in the office, and a Mr. Richardson.

Q. 7. How long have you known Briones?

A. I never had any acquaintance with him except about the Land Commission since the production of this paper as stated.

Q. 8. When, where, and from whom did you first learn of the existence of this paper?

A. I heard of the existence of such a document I think as long ago as I have had any interest in the Potrero, about a year ago, first, I think, in this room [the Court Room of the U. S. Land Commissioners] when the deposition of Francisco Arce was being taken. I do not recollect whether he testified to the fact or whether I heard some one else say he did. I was told also by Julius K. Rose that there were other papers connected with the title to this land which did not appear on file.

Q. 9. How long was the paper in Beard's possession before he showed it to you?

A. I do not know. I do not recollect that he ever told me where or when he got it. I supposed he had just received it. I incline to think I enquired of him, but do not recollect what his reply was. He told me it came from among some papers out at the Mission.

Q. 10. Did he state what papers?

A. He did not.

Q. 11. When the paper was handed you for inspection was you interested in the confirmation of the claim, if yea, why did you not ask to ascertain from the person who exhibited it to you when and where he got it, and the particulars relating to it?

A. Because my curiosity in the matter was absorbed in the importance of discovering so valuable a paper. The fact of its existence was enough, and I believe that my interest in the document tended rather to the present than its former history. I believe this to have been my true feelings at the time and the real reason why my attention was not directed to its history.

Q. 12. Were you, when you bought an interest in the land, aware of the existence of such a paper?

A. I was not. I had seen none of the papers and bought upon the representations of Julius K. Rose, from whom I purchased, that it was a genuine Spanish title.

Q. 13. At what time was that?

A. In December 1852.

Q. 14. To whom did you first show the document named to ascertain its genuineness?

A. To Thomas O. Larkin.

Q. 15. To whom next?

A. To Henry F. Teschemacher, next to Abel Stearns, next to Jacob P. Leese, and other whom I do not recollect.

Q. 16. Repeat a remark you just made to me respecting the paper at that time being as near to yourself as to me. [The Law Agent.]

A. I have made no remark which was intended as a part of this deposition.

Q. 17. How much did you pay for your interest in the land in question?

A. I gave a hundred vara lot on the corner of 4th and Brannan streets, said to be worth now some $10,000 or $12,000.

Q. 18. Did you or not converse with C. K. Garrison about this paper before mentioned, before it was first handed to you by Beard?

A. I did not.

Q. 19. Did you, at any time after it was shown to you, so converse with him; if yea, how soon thereafter?

A. I did after it was shown me converse with him about it; it must have been but a few days after I had the paper examined.

Cross-examined by Counsel for Claimants.

Question 1. Did you exhibit to Gregorio Briones the paper mentioned, so that he could read the same?

Answer. I showed him only his name; it was folded up in part, and I held the paper so that he only saw the top half of the 4th page, on which his name appears.

Q. 2. Did you explain to him the character of the paper?

A. I do not speak Spanish.

Q. 3. What was your motive for not explaining it to him, if any you had?

A. My only wish was to ascertain the genuineness of the signatures, and when he pronounced his genuine I had no other object; I was endeavoring to investigate closely the genuineness.

Q. 4. Had Briones any reason to know, that the paper he testified to in this case was the same you showed him?

A. I do not know; I have no means of knowing; I had no conversation with him except to ask him if that was his signature; all he saw of the paper I showed him was blank paper, except the two names of himself and Francisco Guerrero, and the word asistencia.

Q. 5. From the investigation you have detailed, what was your opinion of the genuineness of the document, and of its execution at the time it bears date?

(Objected to as relating to matter which is not embraced in examination in chief.)

A. My opinion is it is genuine and what it purports to be.

Q. 6. What were the opinions of the various persons to whom you exhibited the paper upon the subject of its genuineness?

A. They all believed it to be genuine.

Q. 7. What were their means of knowing?

A. I only showed it to such persons as I supposed to be conversant with old grants, the signatures on the paper, and those who from being old settlers and acquainted with such matters, could judge correctly.

Q. 8. Were there any other circumstances besides these you have mentioned, which went to establish your belief in the genuineness of the paper; if yea, state them?

A. None other except the general understanding that the land belonged to the grantees named, (the de Haro family,) and that there was no conflicting title known.

Q. 9. How was the land occupied, and by whom, when you first became acquainted with it?

A. There were some brick yards on Mission creek in 1852, when I first went on the land; there was a stone wall enclosing the tract and a gate-way; the gate was locked; it was in possession of Ramon de Zaldo, who was represented as the administrator of the de Haro estate; on the last side there was also a brick yard not in operation, and a tent house belonging to it.

Q. 10. Have you any reason to believe that the heirs of Francisco and Ramon de Haro knew of the existence of this paper before it was discovered by Mr. Beard?

A. I think they did not from the manner in which the case was conducted.

Q. 11. What is their capacity for attending to litigation of this kind?

A. I have very little acquaintance with the members of the family, but I think they are not very well calculated for business; when their petition was filed in this case they were minors or married women, and when I became acquainted with the estate I found their business very much neglected.

Re-examined by United States Law Agent.

Question 1. Was it not general understanding, that when the petition was filed the grant filed therewith was the only one to the land in question?

Answer. The general understanding among the intelligent persons who were interested in behalf of the claim was, that the case had not been well managed and that the claimants had not fair showing in the commission, which was their reason for employing other counsel.

Q. 2. Since the employment of new counsel, is not the principal change in the aspect of the claim such as arises from the production of this paper before mentioned?

A. The whole case has been much better conducted, independent of this paper.

Q. 3. Why was not this new paper produced when the case was under the conduct of the former counsel?

A. Because the paper was not in the possession of the parties in interest; the old counsel are not absolutely dismissed, and I can only say that the paper was introduced as soon after it was obtained by the parties as they could properly get it before the Commission.

Cross-examined again by Counsel for Claimants.

Question 4. Did not Volney E. Howard, Esq., the present counsel in the case, advise that this paper should not be introduced in the case, unless and until its genuineness should be established beyond all controversy?

Answer. He did so advise. S. R. THROCKMORTON.

Subscribed and sworn to before me, this, 27th day of April, A. D. 1854. PETER LOTT,
Commissioner for taking Testimony, &c.

Filed in office April 27th. 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 4, page 335. GEO. FISHER, Secretary.

Deposition of G. R. Gliddon.

UNITED STATES LAND COMMISSION,
San Francisco, June 23, 1854.

On this day, before Commissioner Alpheus Felch, came G. R. Gliddon, a witness in behalf of the United States in case No. 101, in which case Josefa de Haro et al. are claimants, who, after being duly sworn, deposes as follows:

Questions by McKune, Law Agent.

Question 1. Please state your name, age, and place of residence?

Answer. My name is George R. Gliddon, my age is twenty-seven years, and I reside at San Francisco, in California.

Q. 2. Look at the papers now here presented to you, marked Exhibit C, No. 1, heretofore filed in this case, and marked as filed in office, March 2nd, 1854, Geo. Fisher, Secretary, and state when and where, and under what circumstances, you first saw this paper?

A. I have examined it and recognize the document; I first saw it at the Mission Dolores, about the first or middle of the month of September. 1853; I found it among a parcel of papers belonging to Robert T. Ridley, deceased.

Q. 3. When did you receive the papers among which this was found; from whom, and what was the character of the papers?

A. I received those papers from Mrs. Ridley, the widow of Robert T. Ridley, at the time mentioned in last answer; they were Ridley's miscellaneous papers, and there was a large quantity of them.

Q. 4. For what object were they delivered to you?

A. As agent for Mrs. Ridley; I had her power of attorney to do business.

Q. 5. Who had held possession of these papers previous to your receiving them?

A. I do not know; I received them at the house of Mrs. Guerrero, the widow of Francisco Guerrero; Mrs. Ridley delivered them to me at that place; they were in a small China trunk.

Q. 6. Who had transacted the business of Mrs. Ridley previous to your being appointed her agent?

A. I do not know; I do not think she had any regularly appointed agent.

Q. 7. To whom and when did you first communicate the fact that you had found this paper?

A. I cannot give a definite answer; the first I recollect was to Captain Richardson, some time in the year 1853, or January, 1854. I showed it to him; it was at San Francisco; I do not recollect that any one was present, nor the precise place where it was.

Q. 8. To whom did you next show it?

A. I do not remember; I do not recollect ever having shown it to any one except Captain Richardson and the person to whom I delivered it.

Q. 9. With whom did you first counsel about finding the document; when and what was said at that time?

A. I think Captain Richardson was the first one; it was at San Francisco; the time I do not remember, but think about the last of 1853 or first of 1854; I asked him whether the document was a correct document or not; he said it was; he knew the signatures.

Q. 10. With whom and when and where did you next speak concerning it?

A. I think with Mr. Beard, at San Francisco, about the middle or first of January last; I did not produce the document at that time.

Q. 11. Why did you speak to him about it at that time?

A. Because I considered he was largely interested in the property at that time, and it rightfully belonged to him.

Q. 12. How long after this did you show him the document?

A. I gave it to him at the Tehama House, in an envelope, as I found it; this was about the first of February; I think it was about fifteen days after I first spoke to him about it.

Q. 13. To whom did you speak about it between the time you first spoke to Beard about it and the time when you gave it to him?

A. I do not remember as I spoke to any one.

Q. 14. Are Richardson and Beard the only persons you recollect to have spoken to about it while the document was in your possession?

A. They are not; I spoke to several friends about it; I cannot remember them so as to give their names; I remember that I spoke to Charles Brown about it; I cannot remember others, but I spoke to several; I told Brown that I knew there was a title there, and he had better sell his squatter interest; I do not remember of having told him anything else about it.

Q. 15. When you first received the paper, was the ink blot which now appears on the first page over the word "tres," there?

A. I cannot say whether it was or not; I think the document is now as it was when I first saw it, except that it has been badly used, and is more torn.

Q. 16. State the object which you had in view in detaining the paper so long in your possession from the interested parties?

A. It was an object of my own, and I decline answering.

Q. 17. Did Charles Brown ever have the papers among which this was found, and state whether the papers mentioned constituted the body of the papers belonging to the estate of said Ridley?

A. I do not know whether Charles Brown had them in his possession or not; the papers received by me constituted the principal part of the papers belonging to the estate; Mrs. Ridley had other papers, which were not in the trunk from which I took this document.

GEO. R. GLIDDON.

Subscribed and sworn to before me this 23d day of June, A. D. 1854.

Mr. Howard, attorney for claimant, attended at the taking of this deposition, but propounded no question to the witness.

ALPHEUS FELCH, Commissioner.

Filed in office June 23d, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 4, page 643. GEO. FISHER, Secretary.

Deposition of Charles V. Stuart.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA, }

San Francisco, July 3, 1854.

This day personally came before me, Peter Lott, a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Charles V. Stuart, a witness in behalf of the United States, in case No. 101, on the docket of said Board, wherein Josefa de Haro *et al.* are claimants, and said witness being duly sworn, on oath deposed, in English, as follows, to wit:

The counsel for claimants is present.

Questions by the U. S. Law Agent.

Question 1. What is your name, age and residence?

A. My name is Charles V. Stuart; my age is 35 years; my residence at the Mission Dolores, San Francisco County, California.

Q. 2. Look at the document marked H. I. T. No. 1, annexed to the deposition of William A. Richardson, on file herein, and state where, when and in whose possession you saw it, and describe its appearance at that time?

A. I first saw this document in December, 1849, in the house of Francisco Guerrero, near the Mission Dolores; it was in his possession; its appearance then was much the same as it is now, with the exception I will name. This grant or writing, which now appears on the third of said document, purporting to be signed by Manuel Micheltorena, and countersigned by Manuel Jimeno, was not in the paper when I saw it at that time, and there is now writing on the back on fourth page of said paper more than there was then, chiefly the endorsements of the office here in which it has been filed.

Q. 3. State how the paper happened to be shown to you, and who was present at the time?

A. In December, 1849, I was in the Potrero; had taken up a claim there, and I went with Samuel Badger; we went as a committee, appointed by the parties claiming in the Potrero, to said Guerrero's house to examine his title to the land; we understood he had a claim to it, and we had been ordered off of the Potrero land. The paper was accordingly, at our request, then and there read and translated to us. The translator on the occasion was, I think, Robert T. Ridley.

Q. 4. Did you know Francisco Guerrero in his life time, if yea, state what was the character of your intercourse with him and your means of knowledge of his handwriting?

A. I knew him intimately; was in habits of daily intercourse with him, and engaged in business transactions with him frequently; this acquaintance extended from 1849 till May, 1851, when I returned to the States; have frequently seen him write, and know his handwriting well.

Q. 5. Look at the document marked Exhibit C, No. 1, Thompson Campbell, P. L., and state whether or not the signature of Francisco Guerrero, which appears on the fourth page of said document, is his genuine signature?

A. I should think this is not his genuine signature; neither is it his rubric.

Q. 6. State whether said Guerrero was a married man; if yea, whom did he marry?

A. He married Francisco de Haro's daughter, who is now the wife of James Dennison.

Q. 7. At the time you went to examine the title papers, did either Ridley or Guerrero mention or produce any other paper or title than the one shown to you?

(7th question objected to by claimants' counsel, P. L.)

A. They did not mention or produce any other that I recollect.

Q. 8. Look at the two papers now shown to you enclosed in yellow envelopes, and marked one, Exhibit A, accompanying deposition of Juan Padilla, in case No. 101, P. L., and the other marked Exhibit B, accompanying deposition of Juan Padilla, in case No. 101, P. L., and state if you are acquainted with the signatures of Francisco Guerrero, appearing therein; whether you ever saw said papers before, and what you know about them?

(Objected to by claimant's counsel because the two documents are enclosed in sealed envelopes, and because they were in sealed envelopes when presented before, with the deposition of Juan Padilla, and have been broken open and re-sealed without the order of the Commissioner or the Board, and without notice to claimants' counsel. P. L.)

A. The name of Francisco Guerrero as it appears on both papers is his genuine signatures on each. Exhibit A is an official paper signed by Guerrero as Sub Prefect; it is a grant of land to me made by him in his said official character. Exhibit B is an order for money. I have seen them both before.

(The competency of this answer objected to by claimant's counsel.)

Q. 9. Look at the signatures of Francisco Guerrero as exhibited on the two papers above named, and the rubrics thereunder made, and compare it with the name of said Francisco Guerrero on the fourth page of Exhibit C, No. 1, of which you have already

testified, and explain wherein the latter differs from his genuine signature?

(Ninth question objected to as incompetent by claimant's counsel. P. L.)

A. The signature in the envelope A is written with a rapid hand; F and R are not connected in his genuine signature there; he frequently connects the two letters together by a mark made after the letter F is made; in B his signature only has the initial F of his first name; the name on the other document, Exhibit C, No. 1, is a small round hand, each letter of the first name, Franco, being made seperately; it is in a cramped hand. The name of Guerrero as I have seen him write, is made with two dashes of the pen, Guer constituting one, and rero the other; he wrote a rapid hand. The rubrics in the envelopes both differ from the one on the grant; there is no comparison between them.

Q. 10. Look at the writing on the third page of said Exhibit C, No. 1, and give your opinion whether that writing was made before or after the paper had been folded, and the reasons for your belief?

(Tenth question objected to as incompetent by claimants' counsel. P. L.)

A. My opinion is it was written before it was folded; I think so because the writing through the folds on this page gives no appearance of having been obstructed by the folds; no blots or writing with respect to the folds, which generally will appear when writing passes over them after they are made. It is very difficult and almost impossible to write over folds on this kind of paper without the blots and difference of the writing betraying the fact that it was done after the folding; in this writing there is a uniformity which excludes that idea.

Q. 11. What has been the character of your employment? Has it been such as led to the examination of papers, and to render you expert in judging handwriting?

(Eleventh question objected to by claimant's counsel. P. L.)

A. I was twelve or fifteen years in mercantile business; in New York eight years of my life I was cashier of the establishment in that business with which I was connected; during that time I was the partner who paid notes, received and disbursed the means of the concern, settled the various produce accounts with New York, Providence, and Boston, twice a year, and carried on most of the correspondence of the house. In that business I became well acquainted with the character of bank bills for genuineness; our business ranged in annual amount from $150,000 to $400,000.

Q. 12. Look again at Exhibit C, No. 1, and state whether the

writing on third page thereof, signed by Juan Padilla, from the appearance of the ink, has, in your opinion, been recently written or not, and the reasons for your opinion?

(Twelfth question objected to by claimant's counsel. P. L.)

A. My opinion is that that writing has been lately done, from the appearance of the ink.

Q. 13. Look at the words testigo de asistencia, over the signature of Francisco Guerrero, and also at the said signature, and say whether, from their appearance they were written with the same ink and at the same time that the writing on the same document was made, which is signed by Juan Padilla, and the reasons for your opinion?

(Thirteenth question objected to by claimants' counsel. P. L.)

A. The ink is not the same; the writing over Padilla's name is good black ink, and these words and signature are written in ink bordering on the purple, which was very old or injured by the rust of pens, or in some other way; as to the time I cannot answer.

Q. 14. Look at the ink blot on page one of the document, obscuring the word tres, and the other smaller blots near the head of the same page, and say from their appearance whether they are of recent origin, and whether they have been placed there accidentally in the regular course of executing the document, or not, and your reasons for your belief?

(Fourteenth question objected to by claimants' counsel. P. L.)

A. The blots appear to be of a different ink from that of the writing, but I cannot account for their being there; cannot tell whether they came there by accident or design; the ink looks fresher than that of the writing; but as to the date of it I cannot judge.

Q. 15. Did you know Robert T. Ridley in his life-time? If yea, state where, how long, and the character of your intercourse with him, and to what extent and how long you had charge of his papers?

(Fifteenth question objected to by claimant's counsel. P. L.)

A. I first knew him in the fall of 1849; in the spring or summer of 1850, he and I together established a public house at the Mission Dolores, known as the Mansion House; in the spring of 1850 the property on which the Mansion House was established, was sold as the property of said Ridley under execution; I became the purchaser, and this led to our subsequent connection in business; we kept up that house till May 14th, 1854, when I went to the States; during the time we had that house I was in habits of daily intercourse with him; his papers were kept in a large safe which we had in the Mansion House, but they were mostly

Spanish documents; I had no special charge of them; I came to examine his papers several times respecting transactions about his claims.

Q. 16. State whether at that time, if there had been among his papers such a document as said Exhibit C, No. 1, you would have known the fact from your examination of his papers or from conversations with him, or by any other means?

(Sixteenth question objected to by claimant's counsel.)

A. I should not have known by the examination of the papers; I did not then and I do not now read Spanish, and I cannot say whether there was such a paper in the safe or not.

Q. 17. Are you acquainted with Carmen Sibrian de Bernal? If yea, how long have you known her? Where did she reside when you first knew her? How long did she reside there? Did she remove therefrom? If yea, when and to what place did she remove?

A. I know said Mrs. Bernal; I first knew her in the spring, March or April, of 1850; I had known her husband before that; she lived when I first knew her in an adobe house on the San José road, on the north-west corner of the Potrero Viejo, about from one half to one mile distant from the land claimed in this case; she lived there till some time that spring or summer, 1850; she then removed to a new house about one mile south of the old adobe house, where Bernal had built.

Q. 18. When said Mrs. Bernal removed to their new house was you acquainted with the Potrero of San Francisco, if yea, where was it, and who built it, and when was it built?

A. About the time or before she moved away, I think it was January, February, or March, 1850, there was a house built opposite the north end of the stone wall, at the head of the Mission Creek, by a Scotchman, and a garden fenced in and cultivated, till the summer of 1850. This improvement was inside of the stone wall on said Potrero.

Q. 19. At that time how many buildings were there on said Potrero of San Francisco?

A. That was the only building I know of on the west side; I do not know what might have been on the east side.

Q 20. Was that building of the Scotchman in sight from the old adobe house of Mrs. Bernal, and were there any others on the Potrero in sight from her adobe house, and how do you know the house of the Scotchman was erected in the spring of 1850?

A. The Scotchman's house was in sight from Mrs. Bernal's, and there were no other houses in sight of said Potrero from Mrs. Bernal's, and I know when the Scotchman's house was built, for I was there and saw him building it.

Cross-examined by Claimants' Counsel.

Question 1. Where is Samuel Badger, who went with you to Guerrero's house, to examine his title, and also Robert T. Ridley?

A. Said Badger went home to Philadelphia in the summer of 1850, and is probably still there; I do not know, positively; said Ridley is dead; he died in the fall of 1851.

Q. 2. You speak of having had a claim in the Potrero in 1849; what was the character of that claim?

A. It was a squatter's claim, which Mr. Isaac N. Thorne and myself started off, with a view to improve it.

Q. 3. Do you now claim that, or any other land on said Potrero, by virtue of the right of pre-emption in the public domain, if yea, how much do you so claim?

A. There is one claim of about 18 or 20 acres, in which I purchased a one-third interest last fall, or winter, and for which I paid Joseph McMally, the occupant, $1,000. Another claim, of 144 acres, adjoining the one first named, on which I hold an undivided quarter interest, which I obtained from Silas H. Bowman, the present occupant, who claimed it as Government land; I transferred to him a claim which I had under a Sheriff's title, which covered a portion of his land, which had been made out of a judgment against the City of San Francisco; I valued my interest at $4,000, for which the said Bowman relinquished to me the said undivided quarter of his claim. I have an indirect claim upon a one-fifth interest in some 18 acres further north, and adjoining the claim first mentioned in this answer; I held no deed for this last, but have the promise of one from the occupant, who claims it as Government land. The old claim of 1850 I have abandoned, the one I started off with Thorne. These are all the claims I have on said Potrero.

The deposition objected to by claimants' counsel, on the ground of his incompetency, as being interested in the result of this claim.

Re-examined by United States Law Agent.

Question 1. Has the land on said Potrero ever been surveyed by the Government Official Survey of the United States, and has any interest accrued to any one by virtue of the pre-emption laws of said Government, if yea, to whom and how did it so accrue?

This first question is objected to by claimants' counsel, as asking for matters of law. P. L.

Answer. I know of no sectionizing of the Potrero under any Government survey, nor do I know that it has ever been decided to be Government land; until that is so decided, I suppose these occupants, who claim as settlers under the pre-emption laws, can

secure no claims, as such. The only knowledge I have of any effort having been made to secure a legal title to the Potrero, under the pre-emption laws of the United States, is that of Mr. Bowman, from whom I purchased the quarter interest. He procured a survey of his claim by the County Surveyor, in 1852, and filed a plat of that survey in the Recorder's office, and one also in the County Surveyor's office; I understood that Mr. Bowman took these steps in order to secure his rights, as a pre-emptor of the United States Government land.

Cross-examined by Claimants' Counsel.

Question 1. Do you hold any portion of the claims you have specified, under and by virtue of any School warrants of the State of California?

This first question objected to by United States Law Agent, as not cross-examination. P. L.

Answer. No, I do not; Mr. Bowman was, as I understood at one time, in connection with others, interested in some such warrants on the Potrero, but before I became interested as a co-claimant with him, he separated himself from all such interest, so far as related to said Potrero.

Q. 2. Do you expect to hold the lands you claim on said Potrero, if the claim in this case is rejected?

A. I do; if the land is decided to be Government land, I expect to hold through Mr. Bowman, as a pre-emptor of the United States, or if it be declared to be Pueblo land of San Francisco, I expect to hold under my Sheriff's deed; it is within the City limits of San Francisco. CHAS. V. STUART.

Subscribed and sworn to before me, on this 3d day of July, A. D. 1854. PETER LOTT,
Commissioner for taking Testimony, etc.

Filed in office, July 3d, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 5, page 10. GEO. FISHER, Secretary.

Deposition of F. P. Tracy.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA. }

San Francisco, July 3d, 1854.

This day, personally, came before Peter Lott, a Commissioner for taking testimony to be used before the Board of United States Land Commissioners in said State, Frederick P. Tracy, a witness on behalf of the United States, in Case No. 101 on the docket of

said Board, wherein Josefa de Haro et al. are claimants, and said witness being duly sworn on oath, deposed in English, as follows, to wit: [The claimants' counsel is present.]

Questions by United States Law Agent.

Question 1. What is your name, age and residence?

Answer. My name is Frederick P. Tracy, my age 39 years, my residence the City of San Francisco, California.

Q. 2. How long have you resided in California, and at what point?

A. I have lived in California since August 18, 1849; I lived in the central part of the City of San Francisco till November, 1849; in the latter part of that month, at the Mission Dolores, and until the month of May, 1850, for the first four or five weeks, in the house of Robert T. Ridley; the remainder of the time, until said May, in the house with Francisco Guerrero; I then returned to town, and have lived here ever since, till about a month ago, when I moved again to the Mission.

Q. 3. What office did you hold under Government in 1849 and 1850?

A. I held the office of Justice of the Peace from December 8th, 1849, which was the date of my commission from Governor Mason, till May, 1850, or April. At the time of the election that year, of Justices of the Peace, I was commissioned by Horace Hawes as Prefect, and Francisco Guerrero as Sub-Prefect, in the office of Justice of the Peace before the said 8th of December, 1849, temporarily, till my regular commission could come from Monterey.

Q. 4. Look at the document marked H. I. T., No. 1, annexed to deposition of William A. Richardson, and filed in this case, and say whether you have ever seen it before; if yea, state when, where, under what circumstances, and what was then its condition?

A. I have seen this paper before several times. I saw it several times before. It was filed in this office, and have since seen it here. The first time I saw it was soon after I was appointed Justice of the Peace, either late in December or early in January, 1850; it was in the rainy season. At that time a man who was generally called the Scotchman—I did not know his name; he built a shanty on the Potrero, nearly opposite the house lately occupied by Robert G. Perkins. Mr. Guerrero came to me and wished me as a Justice of the Peace to eject the Scotchman from the Potrero. He had Robert T. Ridley with him as an interpreter, as I then spoke very little Spanish. I told Mr. Guerrero I had no right, as Justice of the Peace, to eject the man without other legal proceedings beforehand, and quite a dispute occurred between us—somewhat angry on his part. In the course of the discussion he

produced this paper, and showed it to me, as the title of the de Haro's to the Potrero lands. It was read and interpreted to me by Robert T. Ridley. I told Mr. Guerrero it was not a title, that it was only a grant of possession, a provisional grant; but that as he said the de Haro family was in possession of the land, I would go over with him and talk to the man, which I did. It was in continuation of the discussion as to the force of this provisional grant, that within a few days after that—perhaps a week—I saw this paper twice more—once when Ridley was the medium of conversation, and once when Josefa T. Downy acted as interpreter. Those are the only occasions on which I recollect to have seen the paper before it was filed here. The paper then on these three occasions contained what is now as the first and second pages, and the two lines with the signature of Jimeno under them, near the top of the third page. The indorsement in Spanish on the back is in the hand-writing of said Guerrero; and I am not certain whether it was there then or not, though I think it was. My distinct memory is that all the remainder of the writing now in this paper was not on it at that time. I mean no part of the remainder was on it at that time; and I am the more sure of this because if this Spanish grant on the third page, purporting to be signed by Manuel Micheltorena, had been made known to me, at that time the angry dispute between Guerrero and myself could not have occurred.

Q. 5. At the time said document was interpreted to you by Ridley, as stated by you, did either said Ridley or said Guerrero or any other person produce or exhibit to you or speak of any other document relating to the title of the same land?

This fifth question objected to by claimants' counsel.

A. They did not.

Q. 6. Was Francisco Guerrero at that time married; if yea, who was his wife?

A. He was married to Josefa de Haro, and a claimant in this case. She is the same person who is now the wife of James Dennison.

Q. 7. Were you acquainted with the handwriting of Francisco Guerrero; if yea, state your means of knowing it?

A. I was; and am acquainted with his handwriting. I have known it since I first knew him. During most of the time I was Justice of the Peace, my office was in his house, and official communications were frequently, almost daily, passing between us. I often saw him write, and sign his name, till the time of his death. During the latter part of his life, perhaps six months, I held a power of attorney from him, and attended to his law business.

Q. 8. Look at the paper marked Exhibit C, No. 1, and filed in

this case, and state whether the name of Francisco Guerrero written on the fourth page thereof, is his genuine signature?

A. I believe it not to be his signature.

Q. 9. What is your profession?

A. I am an Attorney-at-Law.

Q. 10. Look on the same document, at the names of Juan Nepo. Padilla, at the bottom of the third page, and Francisco Guerrero and Gregorio Briones, at the top of the fourth page, and state whether those signatures were written with the same ink?

A. I think the signature of Padilla was written with different ink from that used in the other two signatures. What purports to be the signature of Guerrero is evidently written with the same ink as that of the words testigo asistencia. The signature of Gregorio Briones, I believe to be in a different ink from either of the others. It may be possible, however, that on account of its being more boldly written, and more ink used, that it appears to differ from the ink used in the signature of said Guerrero.

Q. 11. Did you ever have occasion to examine the papers of Robert T. Ridley, deceased; if yea, when, where, under what circumstances, and who, if any one, was present?

A. I was often with him to examine his papers, when I lived at the Mission. As I often drew his papers for him after I came to live in town, I did his law business for him till he died. And two or three times I had occasion to go with him to his trunk to find papers which were necessary to be used in his suits. In the month of November or December, 1851, after his death, I wanted to find some papers belonging to Captain Wright, which were said to have been left with Ridley. Isaac N. Thorne was then acting as agent of Mrs. Ridley, the widow, and I got him to go with me to find these papers. We went to Mrs. Ridley's house. She handed over the trunk in which Ridley always kept his papers; and Mr. Thorne and myself made a thorough examination of all the papers which were in the trunk. We examined them the more carefully, as he wished to know from me all about such papers as he did not understand—he knowing that I had done Ridley's business, and that I could inform him as the agent of the widow of such as he did not know.

Q. 12. State how particularly you made this examination, and whether this document marked Exhibit C, No. 1, and filed in this case, was among these papers of Ridley at that time, either in or out of an envelope?

A. We examined the papers in the trunk, taking them up, one by one, reading them sufficiently to ascertain what they related to, and reading carefully all those which related to Thorne's business with the estate, either of claims or liabilities. We read

some of the letters. I recollect some in particular, relating to the Bear Flag war. I took out all the letters and papers of Captain Wright that I could find, and having taken them out and examined all the papers in that manner, I retained those of Captain Wright, put the others back in the trunk, and handed it over to Mrs. Ridley. This paper referred to Exhibit C, No. 1, was not in the trunk. There was no sealed envelope in the trunk.

Q. 13. Are you and have you been well acquainted at the Mission Dolores, if yea, state whether during the year 1853 any other person besides Josefa de Haro resided there who was called Mrs. Guerrero?

A. I have always been well acquainted at the Mission since I first lived there; I never heard of any other person at the Mission or in this vicinity, excepting Josefa de Haro, who ever bore the name of Mrs. Guerrero.

Cross-Examined by Claimants' Counsel.

Question 1. When did you begin to act as Justice of the Peace?

Answer. It was either late in November or the first days of December 1849, a few days before I received the commission from the acting Governor of California.

Q. 2. How long had you been acting as Justice of the Peace when Guerrero made the application to you to eject the Scotchman?

A. I think he made that application about the last of December 1849; I had been acting then about a month.

Q. 3. Were you ever counsel for the de Haros in reference to the Potrero?

A. I have no recollection of ever having acted as counsel for them in any case in reference to the Potrero; I should say Brown, Pratt & Tracy, I being one of that firm, were counsel tor Charles Brown as guardian of Alonzo de Haro in the matter of a petition to the Probate Court of San Francisco County, for leave to sell such interest as said Alonzo had in said Potrero.

Q. 4. Had you any arrangement with said Charles Brown for the purchase of this interest of Alonzo, or any other interest under the de Haro title to said Potrero?

A. I never had any arrangement with him to purchase that or any other interest under said title.

Q. 5. Have you purchased from any of the squatters on the Potrero, or have you had any interest in said Potrero?

A. I have not so purchased and have no interest in the Potrero land.

Q. 6. Are you interested in the firm of Brown, Pratt & Tracy, and do they not receive as part of their fee a contingent interest

with the squatters on the Potrero in the land claimed by the latter?

A. I am interested in that firm as a partner. The firm mentioned do not receive as a contingent fee for their services a part interest with or under the squatters in the lands of the Potrero. Our articles of copartnership are such that one member of the firm cannot take a contingent fee, either in law or otherwise, without making himself responsible to the other members of the firm for their reasonable proportion of said fee in money, unless by an express agreement of the other members of the firm to the contrary. There has been no such agreement made in our firm with reference to the Potrero. If any such an arrangement has been made by any member of our firm it will be optional hereafter for him to propose and for me to refuse to enter into it. I have never received such a proposition from the firm in reference to the Potrero, and do not know of my own personal knowledge of such an arrangement, and never heard that any member of the firm, acting as such, had made such an arrangement. I have heard that one member of the firm had some private speculation in the Potrero lands.

Q. 7. Do you mean to say that no member of the firm has ever informed you that he had made any such professional arrangement with the preëmptors or squatters on the Potrero?

A. Each member of our firm is as well a private individual as a member of that firm. Harvey S. Brown has told me that he has purchased an interest in the Potrero. If such is the fact it is his private purchase and the firm are not interested in it. If he has agreed to render professional services he himself becomes indebted to the firm for those services in so much money.

Q. 8. Is he not to receive a conveyance from the squatters for a portion of the Potrero lands in compensation for his professional services if this claim is defeated?

A. I do not know of my own knowledge. Mr. Brown has told me that it was so.

[Claimants' counsel here objects to the whole deposition of this witness, on the ground of interest in the event of the suit.]

Re-Examined by United States Law Agent.

Question 1. When did you first know the Potrero, and was there any house near the wall at that time?

[This first question objected to by claimants' counsel. P. L.]

Answer. I first knew it when I first went to the Mission in 1849. The Scotchman's was the only house on the Potrero when I went there with Guerrero, though there were tents on it when I first knew it.

Q. 2. Look at the two papers in envelopes marked Exhibit A, accompanying deposition of Juan Padilla, in Case No. 101, P. L., and Exhibit B, accompanying deposition of Juan Padilla, in Case No. 101, P. L., and state whether the name of Francisco Guerrero as it appears in them respectively, is his genuine signature.

A. The name in Exhibit A is his genuine signature; I never saw him sign his name as it is written in Exhibit B, though from the name Guerrero and the rubric I think it is his.

F. P. TRACY.

Subscribed and sworn to before me, this 3d day of July, A. D. 1854.

PETER LOTT,
Commissioner for taking Testimony, etc.

Filed in office July 3d, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 5, page 16. GEO. FISHER, Secretary.

Deposition of Charles Rideout.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA, }

San Francisco, July 5th, 1854.

On this day personally came before me, Peter Lott, a Commissioner for taking testimony to be used before the Board of the U. S. Land Commissioners in said State, Charles Rideout, a witness on behalf of the United States in Case No. 101, on the docket of said Board, wherein Josefa de Haro et al, are claimants, and said witness being duly sworn, on oath deposed, in English, as follows, to wit:

[The counsel for claimants is present.]

Questions by U. S. Law Agent.

Question 1. What is your name, age, and residence?

Answer. My name is Charles Rideout, my age 28 years, my residence at the Mission Dolores, San Francisco County, California.

Q. 2. What time did you come to reside in California, and at what points have you since lived in said State?

A. I came on the 8th of February 1847; I staid in San Francisco till April 8th, then I went to live out at Mission Creek; I lived there till April 17th, 1848; I then went to the mines; I came down from the mines and lived six months at Mission Creek; I went again to the mines, and returned to Mission Creek in the spring of 1850, and have lived there ever since.

Q. 3. During your residence at Mission Dolores were you ac-

quainted with Francisco de Haro, Francisco Guerrero, and Robert T. Ridley, if yea, what was the character of your intercourse with them?

A. I was well acquainted with all these persons named; in June 1847, I did carpenter work for Guerrero in his house; I was so employed about 20 days, boarded during that time in his family, and became acquainted with him and also with his father-in-law, Francisco de Haro, who was in habits of daily intercourse with said Guerrero; I became acquainted with Ridley when I first landed in the country; I was intimate with him; often staid at his house.

Q. 4. Look at the document marked H. I. T. No. 1, annexed to deposition of William A. Richardson, and filed in this case, and state whether you have ever seen it before; if yea, when, where, and under what circumstances?

A. I saw this paper about the latter part of June, or early in July, 1847; I was talking with Mr. de Haro about purchasing a piece of land on the Potrero; I asked him what title he had; he showed me this paper the next morning and said he could not let me have the land; that he had no right to sell; I understood him to say he had a lease of the Potrero; that he could not sell it. He showed me the paper as his title, but he folded it up again and told me he could not sell; that he had a lease or rented the Potrero.

Q. 5. Did he say that was the only title he had for the land?

(5th question objected to by claimants' counsel. P. L.)

A. I asked him if he had any other title or title paper; he said no, this was all the title he had.

Q. 6. Have there been any changes made in this document since you saw it, in 1847; if yea, what are they?

(6th question objected to by claimants' counsel. P. L.)

A. The writing in the third page, purporting to be signed by Manuel Micheltorena, has been done since; I cannot swear very positively that that part of the paper was blank when I saw it in 1847; I remember it as well as though it was yesterday.

Q. 7. Did you ever hear Francisco Guerrero say anything about the title to the Potrero; if yea, what was it?

(7th question objected to by claimants' counsel. P. L.)

A. I do not know that I ever did.

Q. 8. Do you know of any house being on the Potrero in 1850 and 1851; if yea, where did it stand; where and by whom was it built?

A. In the spring of 1850 I saw a house; it stood two or three hundred yards from where the Union race track is; the house was on the Potrero; I do not know who built it; it was not there in

1848; when I went to the mines there was no house there then; I think the man who lived in it was a Scotchman or an Irishman.

Q. 9. Are you acquainted with Carmen Sibrian de Bernal; if yea, where did she live when you first knew her, and when did she move from there, and to what place did she remove?

(9th question objected to by claimants' counsel. P. L.)

A. I was well acquainted with her; she lived about a mile beyond the Mission, on the county road to San Josè, in an adobe house, the only adobe house in that vicinity at that time. She moved from there while I was in the mines; when I returned from the mines, betwixt 1850 and 1851, she was living in a new house she had built, about two miles beyond that, near the same county road.

Q. 10. Was the Scotchman's house on the Potrero in sight of the abobe house in which Mrs. Bernal first lived, or was there any other house on said Potrero in 1850 or 1851, in sight of said adobe house?

A. I do not think the Scotchman's house was in sight from said adobe house, and there was no other house on the Potrero in sight from said adobe, except Mr. Treat's house on the Union race course.

Q. 11. Are you acquainted with Francisco Guerrero's signature; if yea, state your means of knowledge, and look at his name on the 4th page of document marked Exhibit C, No. 1, and filed in this case, and state whether or not that is his genuine signature?

A. I am acquainted with his signature; I have often seen him write; this looks something like his signature, except the flourish of the pen under it, and it is not as neat as he usually wrote; he wrote a neat hand; I never saw him make that kind of a flourish with his pen; he generally made a sort of mark different from this.

Q. 12. Examine his signature as it appears on the two papers, marked respectively Exhibit A, accompanying deposition of Juan Padilla in case No. 101, P. L., and Exhibit B, accompanying deposition of Juan Padilla in case No. 101, P. L., and state whether they are his genuine signatures?

(12th question objected to by claimants' counsel, on the ground that the papers are sealed in envelopes and not all shown to the witness. P. L.)

A. The one on Exhibit B is certainly his genuine signature, and the one on Exhibit A looks like his, though I am not so positive about it.

Cross-examined by Claimants' Counsel.

Question 1. What is your native place?

Answer. The State of Massachusetts.

Q. 2. Did de Haro translate the title to you when he showed it to you?

A. He did not; I could read Spanish enough to read the printed part at the top, or to make out the date, but I could not read the the manuscript part; I cannot now read Spanish well enough to translate the writing.

Q. 3. You say that Mr. de Haro folded up the paper and said he could not sell to you; how long did this interview and examination of the paper last?

A. Some ten or fifteen minutes.

Q. 4. Have you seen said paper since that time, till it was shown to you this morning?

A. I have not.

Q. 5. Who told you there was such a paper here, and invited you to come here to testify about it?

A. No one told me there was such a paper here; Mr. Stuart summoned me this morning from the police office as a witness in this case.

Q. 6. Do you know what the writing is on the 3rd page of the document referred to, which you say was not there when you saw it in 1847?

A. I do not; I know the signature and the heading Monterey, Mayo 24th, 1844.

Q. 7. Do you mean to swear positively that a single paragraph in the Spanish language was not in this document in 1847, on the 3rd page of said paper, which you could not read at that time, and cannot read now, and have not seen from that time to this.

A. I can swear to the best of my memory that the signature of Micheltorena was not there, and that I did not see any of the writing embraced in the document which is over his signature, but that that part of the paper was blank.

Q. 8. Did you ever settle or have any claim on the Potrero, or have any interest in a claim thereon?

A. I never did settle on it or have any claim or interest in it.

CHARLES RIDEOUT.

Subscribed and sworn to before me on this 5th day of July, A. D. 1854.

PETER LOTT,
Commissioner for taking Testimony, &c.

Filed in office July 5th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 4, page 25. GEO. FISHER, Secretary.

Deposition of J. H. Davis.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA, }

San Francisco, July 5th, 1854.

This day personally came before Commissioner Peter Lott, for taking testimony to be used before the Board of United States Land Commissioners in said State, John H. Davis, a witness on behalf of the United States, in case No. 1, on the docket of said Board, wherein Josefa de Haro *et al* are claimants, being duly sworn on oath, deposed in English as follows, to wit:

(The counsel for claimants is present.)

Questions by United States Law Agent.

Question 1. What is your name, age and residence?

A. My name is John Hawes Davis; my age 28 years; my residence San Francisco, California.

Q. 2. How long have you resided in California; at what point, and in what employment?

A. I came here to reside in July, 1848, and since that time have lived in San Francisco and the Mission Dolores; my principal business has been dealing in real estate; I was one year merchandizing.

Q. 3. Were you acquainted with Francisco de Haro, Francisco Guerrero and Robert T. Ridley? If yea, state the character of your intercourse with them.

A. I was acquainted with said Ridley and Guerrero, but I did not know Mr. de Haro; I was upon terms of intimacy with Guerrero and Ridley.

Q. 4. Look at the document marked Document H. I. T., No. 1, annexed to the deposition of William A. Richardson, and filed in this case, and state whether you ever saw it before; if yea, when, where, and under what circumstances?

A. I have seen the papers before; it was about September or October, 1849, at Francisco Guerrero's house; I was there overhauling some papers with him and one Iñigo, who was his Secretary; we were examining papers relating to Mission lands; this paper was among a bundle of grants he had there.

Q. 5. Have there been additions made to the writing on said paper since you saw it in 1849? If yea, what are they?

(5th Question objected to by claimants' counsel P. L.)

A. The writing on the 3d page of it, purporting to be signed by Micheltorena, was not on the paper when I saw it in 1849; that portion of the paper was then blank.

Q. 6. Are you acquainted with Cármen Sebrian de Bernal? if

yea, where did she live when you first knew her, and where afterwards?

A. I was acquainted with her about December, 1848, she then lived in an adobe nouse near the Mission; she moved afterwards, I think, late in 1850 or early in 1851 to a place one-and-a-half or two miles beyond that.

Q. 7. When, where, and by whom was the first house built on the Potrero claimed in this case?

A. The first house I ever saw there was in the latter part of 1849 or early in 1850; some settlers moved in and put up two or three shanties; it was previous to January, 1850.

Q. 8. Before these shanties were put up, was you from the time you came here to reside well acquainted with said Potrero, and if there had been any houses there would you not have known it?

A. I rode over the Potrero nearly every week during that period, and would have known if there had been any houses there. I saw everything that was in it.

Q. 9. What relations of business or family connection existed between Robt. T. Ridley and Francisco Guerrero and Francisco de Haro?

A. Guerrero was son-in-law of de Haro. and they lived with their families all in the same house; I know of no other relationship between Ridley and them than that of acquaintances and neighbors; I do not know of their having any great deal of business connection.

Q. 10. Are you acquainted with the handwriting of Francisco Guerrero, and are you an adept, from your experience, in examining, comparing and judging of signatures?

(10th Question objected to by claimants' counsel.)

A. I am well acquainted with said Guerrero's signatures from my experience in examining them.

Q. 11. Look at the paper marked Exhibit C, No. 1, and filed in this case; and also at the two papers in envelopes, marked respectively Exhibit A and B, accompanying the deposition of Juan Padilla, in case No. 101, P. L., and state whether they are the genuine signatures or not of Francisco Guerrero, which appear on said papers?

(11th Question objected to by claimants' counsel, P. L., and objected to specially on account of the papers being in sealed envelopes, and not fully exhibited to the witness.)

A. The signature on Exhibit A is certainly genuine; the one on Exhibit B, I do not think is his signature; I never saw him write his name like that, and I am sure he never wrote this signature of his name here on the 4th page of Exhibit C, No. 1; he wrote a freer and bolder hand, and in his first name connected the letters

and made a different mark under his name from this. His signatures were generally written Franco—sometimes the full name, Francisco. There was a uniformity in his signature in this, that the capital F was disconnected from the r, but ranco was always connected. He generally wrote his name very large when he had room on the paper, and his flourish was also large and bold.

Cross-examined by Claimants' Counsel.

Question 1. Did I understand you to say that Guerrero took several titles from a bundle and read them one by one?

A. He did not read them all through, but examined them and explained their contents.

Q. 2. Did you read them?

A. No, I did not read them myself.

Q. 3. Could you read Spanish manuscript at that time?

A. No, I could not fully.

Q. 4. In what language did Guerrero explain the titles?

A. A portion in Spanish, and a portion through Iñigo, his Secretary, as interpreter.

Q. 5. You did not examine any of the papers?

A. I took them *and looked them* over, but did not read them; I could not read Spanish well enough.

Q. 6. Can you translate now into English the paragraph on the 3d page of the document you first examined, document H. I. T., No. 1, purporting to be signed by Micheltorena?

A. I cannot.

Q. What is your present employment?

A. Dealing in real estate for myself.

Re-examined by the United States Law Agent.

Q. 1. Could you in 1849, when you were at Guerrero's house, and can you now converse in Spanish?

A. I could then talk Spanish very well, and so could my whole family; I cannot now talk it as well as I could then.

Q. 2. Look at the name of Manuel Jimeno as it appears on the 2d page of the paper marked Document H. I. T., No. 1, annexed to deposition of William A. Richardson, and compare it with the same name on the 2d page of Exhibit C, No. 1, and say whether, from your knowledge as an expert in judging of handwriting, they were written by one and the same person?

(This 2d Question objected to by claimants' counsel as not relating to his cross-examination P. L.)

A. I should think they were not written by the same person.

J. HAWES DAVIS.

Subscribed and sworn to before me this 5th day of July, A. D. 1854.

PETER LOTT,
Commissioner for taking Testimony, &c.

Filed in Office July 5th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 5, page 21. GEO. FISHER, Secretary.

Deposition of Antonio Bujan.

UNITED STATES OF AMERICA, } ss.
STATES OF CALIFORNIA, }

San Francisco, July 6th, 1854.

This day personally came before Peter Lott, a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Antonio Bujan, a witness on behalf of the United States in case No. 101, on the docket of said Board, wherein Josefa de Haro *et al.* are claimants, and said witness being duly sworn, on oath deposed in Spanish, which was interpreted to said Board as follows, to wit:

The counsel for claimants is present.

Questions by the U. S. Law Agent.

Question 1. What is your name, age and residence?

Answer. My name is Antonio Bujan, my age 34 years, and my residence at the Mission Dolores, San Francisco County, California.

Q. 2. How long and at what point have you lived in California, and in what employment?

A. I have lived in California since November, 1842; I lived at San Francisco from 1842 to 1846, and from that time till 1850 at the Pueblo of San José, and since that time at the Mission Dolores; my employment has been principally trading and merchandizing.

Q. 3. Were you acquainted with Governor Micheltorena, former Governor of California, if yea, how long and what was the character of your intercourse with him?

A. I was acquainted with him; I knew him first in 1840, in Mazatlan, and in 1842, about October, I came with him to this country; I was a steward in one of the vessels of an expedition which came, and Micheltorena was on another; I knew him by sight, and always saluted him when we met; I had no particular acquaintance with him.

Q. 4. Are you acquainted with the handwriting of Governor Micheltorena, if yea, state your means of knowledge?

A. I am acquainted with his handwriting; I have seen him write several times on board the vessel at Mazatlan, and also here

in California, besides I have seen documents signed by him which I have in my possession, and also grants and documents of my friends.

Q. 5. Look at the signature of Manuel Micheltorena on the second page of the paper Exhibit C, No. 1, filed in this case, and also at the same name on the second and third pages of document H. I. T., No. 1, annexed to deposition of William A. Richardson, in this case, and state which of said names so appearing is the genuine signature of said Micheltorena, if any of them are?

(5th question objected to by claimants' counsel. P. L.)

A. This on second page of Exhibit C, No. 1, does not appear to be the natural handwriting of Governor Micheltorena, and the rubric is imperfect, and I do not think it is his genuine signature; the signature on the second page of document H. I. T., No. 1, is his genuine signature, but the one on the third page of said document is altogether imperfect and is not genuine.

Q. 6. Look at the writing on the first page of Exhibit C, No. 1, and state whether it was in your opinion written by a Spanish scholar?

(6th question objected to by claimants' counsel. P. L.)

A. It does not appear to me to be in the handwriting of a Spaniard or a Mexican; there seems to have been too much pains taken with it, and too many flourishes on it.

Q. 7. Did you know Francisco Guerrero, if yea, how long; did you know his handwriting, if yea, by what means, and was you intimate with him?

A. I was well acquainted with him from 1842 till he died; I know his handwriting; have often seen him write; I was sufficiently intimate with him to know it.

Q. 8. Look at the name of Francisco Guerrero, as it appears on the fourth page of Exhibit C, No. 1, filed in this case, and state whether that is his genuine signature?

A. I am very well satisfied it is not the handwriting of Guerrero.

Q. 9. Look at the paper in an envelope marked Exhibit A, accompanying deposition of Juan Padilla, in case No. 101, P. L., and say whether the name of said Guerrero, as it appear thereon, is his genuine signature?

(Question 9th objected to by claimants' counsel, because the whole document is not exhibited, but is in a sealed envelope. P. L.)

A. This is his genuine signature; I know it very well; I have had reason to know him several years.

Cross-examined by Claimants' Counsel.

Question 1. Did you join the expedition under Governor Micheltorena at Mazatlan?

Answer. The Mexican Government employed three or four vessels at Mazatlan for the expedition, on one of which I was a steward.

Q. 2. What did you do on board said vessel?

A. I had all the provisions and stores in my charge.

Q. 3. What has been your business since you arrived in California?

A. I kept a grocery store and sold groceries till 1850, here and at San José; since that year I have been making bricks at the Mission and at the Potrero.

Q. 4. When were you last in the calaboose?

A. I never was; you are mistaken in the person.

Q. 5. What officers were on board of the vessels with Governor Micheltorena when he came here?

A. There was a number of officers with him, but I can only recollect the names of Flores and Tilles; they were both Colonels, I think.

Q. 6. What was the name of the Captain and the vessel on which you came, and also of the others?

A. The vessel was the brig Prunavera, Captain Chinn, on which I came; I do not know the names of the others; one was a barque and one a hermaphrodite brig; Colonel Flores and Colonel Tilles came on the Prunavera. ANTONIO BUJAN.

Subscribed and sworn to before me, on this 6th day of July, A. D. 1854. PETER LOTT,

Commissioner for taking Testimony, &c.

Filed in office July 6th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 5, page 29. GEO. FISHER, Secretary.

Deposition of John A. Sutter.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA, }

San Francisco, July 6th, 1854.

This day personally appeared before Peter Lott, a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, John A. Sutter, a witness on behalf of Josefa de Haro *et al.*, who are the claimants in case No. 101, on the docket of said Board, and said witness being duly sworn, on oath deposed in English as follows, to wit:

The U. S. Law Agent is present.

Questions by Claimants' Counsel.

Question 1. What is your name, age and residence?

Answer. My name is John A. Sutter; my age years; my residence Hock Farm, Sutter County, California.

Q. 2. Were you acquainted with the handwritings of Governor Manuel Micheltorena, of his Secretary, Manuel Jimeno; if yea, by what means?

A. I know the handwriting of both of them very well; I have often seen Micheltorena write, and was familiar with Jimeno's writing; have corresponded with him.

Q. 3. Look at the document marked Exhibit C, No. 1, and filed in this case, and say whether the signatures of Micheltorena and said Jimeno therein written, are their genuine signatures?

A. These are their genuine signatures.

Q. 4. What do you say of their rubrics in this document?

A. They are here as I have always seen them made by them; I have many letters from them both.

Cross-examined by United States Law Agent.

Question 1. When did you last see Micheltorena write his name?

Answer. In 1845, in Santa Barbara.

Q. 2. How many times have you ever seen him write his name?

A. I cannot say exactly, but I believe as many as ten or twelve times.

Q. 3. Did not both Micheltoreno and Jimeno write their names rapidly, and were not the signatures of each of them of uniform character?

A. Micheltorena did write his name rapidly; I never saw Jimeno write, and I know them all to be uniform just like these on this document.

Q. 4. Was Micheltorena's rubric always uniform?

A. Yes; it was.

Q. 5. Look at the signatures of Micheltorena on the second and third pages of document marked Document H. I. T., No. 1, annexed to deposition of William A. Richardson, in this case, and say whether they are genuine?

A. The one on the second page is his genuine signature; the one on the third page is not; it is a counterfeit; I feel very positive.

Q. 6. Look at the rubric of Micheltorena on the second page of each of these documents, and on the first page of Exhibit C, No. 1, and say if they are genuine?

A. I believe they are all his genuine signatures and rubrics; this on the first page of Exhibit C, No. 1, may vary a little from

the others; but it is genuine, and Micheltorena would not have signed on the other side of that same paper if this were not his rubric.

Q. 7. Is not your last statement one main reason why you think the rubric on said first page genuine?

A. Yes; it is.

Q. 8. Do you recollect ever to have seen Micheltorena's rubric with the same turn to the upper line as this on the first page; if yea, when?

A. I cannot remember every little turn or variance; this is evidently his genuine rubric, though it may vary from others, as does my own, and I suppose every gentleman's when he writes at different desks. J. A. SUTTER.

Subscribed and sworn to before me on this sixth day of July, A.D. 1854. PETER LOTT,
Commissioner for taking Testimony, &c.

Filed in office July 6th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 5, page 31. GEO. FISHER, Secretary.

Deposition of Toribio San Feran.

UNITED STATES LAND COMMISSION,
San Francisco, July 10th, 1854.

On this day, before Commissioner Alpheus Felch, came Toribio San Feran, a witness in behalf of the United States in case No. 101, wherein Josefa de Haro *et al*, are claimants, who, after being duly sworn, deposed as follows, his evidence being interpreted by the Secretary:

Questions by Mr. McKune, Law Agent.

Question 1. Please state your name, age, and place of residence?

Answer. My name is Toribio San Feran, my age twenty-eight years, and I reside at the Mission Dolores.

Q. 2. How long have you resided in California, and where have you lived during that time?

A. I have resided here since 1840, and have lived all that time at San Francisco and the Mission.

Q 3. How long have you been acquainted with the Potrero of San Francisco, claimed in this case, and who had possession of it when you first knew it?

A. I became acquainted with it about 1841, and the padres of the Mission Dolores had possession of it at that time.

Q. 4. How long did they continue to exercise jurisdiction over it?

A. I cannot say until what time they had jurisdiction of all the ranchos.

Q. 5. For what purpose was it used, and who used and occupied it up to the year 1847?

A. It was not occupied by any person; there was no house on it up to 1847.

(Mr. Howard objects to this question and answer.)

Q. 6. Who pastured cattle on these premises previous to 1847?

A. Everybody; all the world that lived at the Mission.

(Mr. Howard objects to this question and answer.)

Q. 7. Did any person maintain possession, or claim the right to exclude others during that time?

A. There was no person; I myself have had cattle there, and no person put me off of it.

(Mr. Howard objects to this question and answer.)

Q. 8. Who built the stone fence bordering the Potrero?

A. The padres of the Msssion.

Q .9. Did the de Haros make any improvements on the premises prior to 1847?

A. They did not.

(Mr. Howard objects to this question and answer.)

Questions by Mr. Howard, Attorney for Claimants.

Question 1. When did you first have cattle on the Potrero?

A. I believe it was in 1848 or 1849.

Q. 2. When did the padres build the stone wall?

A. I did not see it built; it was built before I came to the country; I did see the priests order the Indians to repair the wall in 1842 or 1843.

Q. 3. How did you know the padres built it?

A. Because that at that time the land there was recognized as belonging to the Mission or the church.

Q. 4. How do you know that the de Haros claimed the land?

A. Because I heard the de Haros, the boys Francisco and Ramon, before their death, call it theirs in conversation; they were killed during the war with the Americans.

Q. 5. How many years before their death did you hear them claim this land?

A. In 1844 or 1845, or about that time.

Q. 6. What are the boundaries of the Potrero?

A. I do not know.

Q. 7. When was you on the Potrero for the first time?

A. It is so many years since I came here that I cannot recollect when was the first time.

Q. 8. When was the last time?

A. In 1848 or 1849, the time I was there herding my cattle, as before mentioned.

Q. 9. Was you there in 1844 or 1845?

A. I was not. I was, however, in San Francisco.

Questions by Mr. McKune.

Question 1. In what business are you now employed?

Answer. I am employed in the Custom House.

[Mr. Howard objects to this question and answer.]

Q. 2. Where was you employed in 1844 and 1845?

A. I was working for myself here at the Bay.

Q. 3. Did you in those years frequently pass by and in sight of the place?

A. I did on some few occasions.

[Mr. Howard objects to this question and answer.]

TORIBIO SAN FERAN.

Subscribed and sworn to before me this 10th day of July, 1854. ALPHEUS FELCH, Commissioner.

Filed in office July 10th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 5, page 72. GEO. FISHER, Secretary.

Deposition of D. Waling.

UNITED STATES LAND COMMISSION, }
San Francisco, July 10th, 1854. }

On this day, before Commissioner Alpheus Felch, came David Waling, a witness on behalf of the United States in Case No. 101, in which case Josefa de Haro et al are claimants, who after being duly sworn, deposed as follows;

Questions by Mr. McKune, Law Agent.

Question 1. What is your name, age, and place of residence?

Answer. My name is David Waling, my age is thirty-three years, and I formerly lived at the Mission Dolores.

Q. 2. Did you know Francisco Guerrero in his life time, if yea, how long did you know him. Do you know his handwriting, and if yea, what means have you of knowing it?

A. I know said Guerrero ever since 1847; I am acquainted with his handwriting; I have seen him write his signature often;

I was clerk for Robert A. Parker, and we used to make contracts with him for horses and cattle, and I have frequently seen him sign the contracts.

Q. 3. Look at the document now here presented to you, marked Exhibit C, No. 1, heretofore filed in this case, and state whether the signature appearing as his on the last page thereof, is the genuine signature of said Guerrero?

A. I have examined said document; the signature referred to is not his signature.

Q. 4. Are you acquainted with the land called Potrero of San Francisco, claimed in this case, if yea, how long have you known it?

A. I have known it ever since the 17th or 18th of April, 1847.

Q. 5. Were you acquainted with Francisco de Haro, if yea, have you ever had any conversation with him in relation to his claim to said land?

A. I was acquainted with said de Haro; I never had any conversation with him about the land.

Q. 6. Was there any house on said land when you first knew the place, if not, when was the first house built on the premises?

A. There was no house on it when I first knew the land; I cannot tell when the first house was built there.

Question by Mr. Howard, Attorney for Claimant.

Question 1. Where is the Potrero situated?

Answer. On the south side of the Mission Creek.

Q. 2. Do you know what were the boundaries of it?

A. I do not.

Q. 3. How can you say that a particular house, which you described, was situated upon it, if you do not know the boundaries?

A. I said there was no house situated upon it. Mr. Andrews and Francisco de Haro used to come down frequently to the brick yard, when we were working, and Andrews stated to me that they had leased the land that was right abreast of me to herd cattle on. That was the Potrero, I expect, and I know there was no house on in. Andrews was the son-in-law of said de Haro.

Q. 4. To whom was the land leased?

A. To Andrews and de Haro; so I understood them from the way they talked.

Q. 5. Did de Haro speak English?

A. At that time he could not.

Q. 6. Did you speak Spanish at that time?

A. I did not. Andrews spoke English.

DAVID WALING.

Subscribed and sworn to before me, this 10th day of July, 1854.
ALPHEUS FELCH, Commissioner.

Filed in office July 10th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 5, page 70. GEO. FISHER, Secretary.

Deposition of I. N. Thorne.

UNITED STATES LAND COMMISSION, }
San Francisco, July 10th, 1854. }

On this day, before Commissioner Alpheus Felch, came Isaac N. Thorne, a witness on behalf of the United States, Case No. 101, who after being duly sworn, deposed as follows:

Questions by Mr. McKune, Law Agent.

Question 1. Please state your name, age, and place of residence.

Answer. My name is Isaac N. Thorne, my age is twenty-nine years, and I reside at San Francisco, California.

Q. 2. Were you acquainted with Robert T. Ridley, if yea, state where he resided, and whether there was any other person of that name in the neighborhood, and what was the character of your intercourse with him?

A. I was acquainted with him. He resided at the Mission Dolores; and there was no other person of the same name, to my knowledge, in the neighborhood. I was connected with him in business at one time; we were in business together from July 1850, until the time of his death, which I think was in October 1851; I frequently transacted business for him, and his papers were sometimes given to me to keep.

Q. 3. Did you ever examine his papers carefully in company with F. P. Tracy, Esq., after the death of Ridley, if yea, state to what extent the examination was made?

A. I went to the house of his widow after his death, in company with said Tracy, [to examine] the papers and to see if there were among them any letters belonging to a man by the name of Wright. His widow gave us a little trunk containing his papers, which we examined for that purpose. I went at the request of Mr. Tracy. I was doing some business for the widow at that time, and for that reason I suppose he asked me to go with him to her house. My recollection is that I took a part of the papers and Mr. Tracy the remainder, to see if we could find the letters belonging to Mr. Wright. I never had anything to do with the papers afterwards; I had no occasion to look into or examine them subsequently.

Q. 4. Please look at the document now here presented to you marked Exhibit C, No. 1, Thompson Campbell, P. L., heretofore filed in this case, and say whether that paper was among those which were in the trunk when you examined said Ridley's papers?

A. I do not think I saw it.

Q. 5. What was the character of the intercourse between the heirs of Francisco de Haro and R. P. Ridley?

A. They were intimate and friendly.

Q. 6. Were you acquainted with Carmen Sibrian de Bernal, if yea, where did she reside?

A. I know her. When I first knew her, which was in 1849, she resided in an adobe house, about half a mile south of the Mission Dolores. She built a house in the fall of 1850 or 1851, about a mile and a half in a southerly direction from that house, and moved into it. I do not know where she has been living for the last year, but I know she lived in the house built in 1850 or 1851, for some two years after it was finished.

Q. 7. Are you acquainted with the Potrero of San Francisco, claimed in this case; if yea, how long have you known it. Was there any house on said Potrero in sight from the house of Carmen, when you first knew the place. If not, when was a house built there?

A. I am acquainted with the place, and have known it since November, 1849. In 1849 there were some tents on said Potrero. I do not recollect any house there. I do not recollect when the first house was built on the Potrero. I did not go there often. The first house I recollect of seeing there was on the highest part of the Potrero, as it appeared from the Mission. This house was said to have been built by Hiram Pearson.

Questions by Mr. Howard, Attorney for Claimants.

Question. 1. Did you examine those papers for any other purpose than to find whether there were among them any letters for Wright?

Answer. I did not examine them for any other purpose.

Q. 2. Did you read all or any of the papers?

A. I ran over two or three letters. That is all I believe that I read. Those were two or three letters addressed to Ridley.

Q. 3. Were any papers relating to titles to lands read?

A. Not that I remember. I do not recollect of seeing any in relation to lands. None were translated in my presence that I recollect.

Q. 4. Might there have been title papers among these papers without your noticing them?

A. I do not know. They appeared to be mostly letters addressed to Ridley.

Q. 5. Who claimed the Potrero in 1849?

A. The heirs of Francisco de Haro.

Q. 6. Whose tents were these which you have mentioned?

A. They were men who left in the spring of 1850. I did know the names of two of them at that time.

Q. 7. Are you acquainted with the handwriting of Francisco Guerrero?

A. Yes; I have seen him write.

Mr. McKune objects to this question and answer.

Q. 8. Please look at the document marked C No. 1, being the same paper mentioned in four above, and state whether the signature appearing thereon as that of said Guerrero is his true and genuine signature?

A. I have examined it. It does not look to me like his signature, as he wrote it in 1850, when I knew him. I have seen papers though which I believe genuine, written earlier than 1850, that this signature resembles.

Q. 9. Was there any change in his handwriting?

A. I think there was in his signature. I judge so from seeing his signature on documents previously written.

Q. 10. Please look at the document now here presented to you, marked Exhibit No. 1, with the initials A. F., and annexed to his deposition, and state in whose handwriting the body of the instrument and the signature thereto are?

A. I have examined it, and believe the body of the instrument and the signature to be written by said Guerrero.

Q. 11. Look on the paper now here presented to you, marked Exhibit No. 2, with the initials A. F., and annexed to this deposition, and state in whose handwriting the instrument and signature are?

A. I have examined it, and believe both the body of the instrument and the signature to be in the handwriting of said Guerrero.

Q. 12. Answer the same question as to document now presented, marked Exhibit No. 3, with the initials A. F., and hereto annexed?

A. I have examined said document, and should think the body of it and the signature were in Guerrero's handwriting.

Q. 13. What was Guerrero's age and habits in 1850?

A. I should think his age about 36 years, and at times he was intemperate.

Mr. McKune objects to all this deposition, on the cross-examination, which is not confined to the matter elicited in the direct examination.

Question by Mr. McKune.

Q. 1. Please look at the document now here presented, marked Exhibit A, accompanying deposition of Juan Padilla, in Case No. 101, P. L., and state whether the signature thereto is the genuine signature of said Guerrero?

A. I have examined it, and the signature thereon corresponds with my recollection of his signature in 1850.

Mr. Howard objects to the above, because the document shown to the witness is enclosed in a sealed envelope.

Q. 2. Are the documents mentioned in questions 10, 11 and 12, above, the same meant by you in the answer which you have made to question 8 in the last paragraph?

A. They are not. I referred to letters of his which I have seen. I saw one of them in the hands of Hiram Pearson about a month since. That letter was remitted to George Hyde, formerly Alcalde of San Francisco. I think he was Alcalde in 1847.

ISAAC N. THORNE.

Subscribed and sworn to before me this 10th day of July, A. D. 1854. ALPHEUS FELCH, Commissioner.

Filed in office July 10th, 1854. GEO. FISHER, Sec'y.
Recorded in Evidence B, volume 5, page 74. GEO. FISHER, Sec'y.

Exhibit No. 1, A. F. P. L. annexed to the deposition of I. N. Thorne.

Juzgado de San Francisco.

Habiendo manifestado el mayordomo del bergantin Corsario que no se considera seguro abordo de dicho buque, teniendo alguna venganza particular del Capitan por la declaracion que ayer diò contra este, y habiendome pedido un arresto en tierra mientras se concluye el asunto que nos ocupa, se le avisó á V. para si lo juzgaba conveniente, imponga á dicho individuo arresto en una parte segura con responsabilidad del individuo que se hiciera cargo de él.

Dios y Libertad.—Yerba Buena, Diciembre 3 de 1839.

FRANCISCO GUERRERO.

Filed in office July 10th, 1854. GEO. FISHER, Secretary.

Translation.—Exhibit No. 1, A. F. P. L. to deposition of I. N. Thorne.

Justice Court of San Francisco.

The steward of the brig *Corsario* having complained to me that he does not consider himself safe aboard the said vessel, fearing some personal vengeance from the Captain in consequence of a

trial made by the latter against the former, and having asked me to put him under arrest on shore until the conclusion of the business with which we are engaged, I notify you thereof, in order that, if you consider it necessary, the said individual be placed under arrest in some place, holding the person to whom you may entrust him responsible.

God and Liberty.—Yerba Buena, December 3, 1839.

[Signed] FRANCISCO GUERRERO.

To the Captain of the Port of San Francisco.

A true and correct translation. GEO. FISHER, Secretary.

Filed in office July 10, 1854. GEO. FISHER, Secretary.

Exhibit No. 2, A. F. P. L., annexed to the deposition of I. N. Thorne.

Administracion de la Aduana de San Francisco.

El Sor. Ad'tor. de la Aduana del puerto de Monterey me dice en su nota oficial del dia 22 del presente, de que todo lo que traigan en efectos los buques balleneros deberán de pagar sus derechos, siendo expedidos en este puerto, y como algunos buques no han tocado en este, siendo por derecho el verificado, no se ha podido cumplir con dicha órden, en tal concepto suplicó á V. como Capitan de dicho puerto, les haga presente esto, pues tambien han reclamado varios comerciantes que han pagado sus derechos, y para el efecto se me remitió un corto alcance del General que rije en la República.

Todo lo que tengo el honor de comunicar á V. ofreciéndole las sinceras consideraciones de mi aprecio.

Dios y Libertad.—San Francisco, Setiembre 28 de 1841.

FRANCISCO GUERRERO.

Sor. Capitan de Puerto, Don Guillermo Richardson, Saucelito.

Filed in office July 10th, 1854. GEO. FISHER, Secretary.

Translation.—Exhibit No. 2, A. F. P. L., to deposition of I. N Thorne.

Office of the Sub-Collector of Customs,
At the Port of San Francisco.

The Collector of Customs at Monterey informs me in an official note of the 22d inst., that all the merchandise brought in whaling vessels and expended at this port should pay duties; and as some vessels have not touched here, having a right to do so, it has been impossible to enforce the said order. Wherefore, I entreat you, as Captain of the said port, to notify them hereof, since several merchants have complained that they have paid their duties; and

for that purpose I have received a short tariff from the General that governs in the Republic.

All of which I have the honor to communicate to you, assuring you of the sincere considerations of my esteem.

God and Liberty.—San Francisco, September 28, 1841.

[Signed] FRANCISCO GUERRERO.

To the Captain of the Port, Don Guillermo Richardson, Saucelito.

A true and correct translation. GEO. FISHER, Secretary.

Exhibit No. 3, A. F. P. L., annexed to deposition of I. N. Thorne.

Juzgado de Paz de San Francisco.

Habiendo presentado en este juzgado de mi cargo el oficial 1.° de la Aduana y Comandante de Monterey con un Espediente con presentado por el Ad'tor. Don Antonio María Osio al Juez de Paz de dicho Monterey, y V. como Capitan de Puerto pido se exija poner en tierra la tripulacion del bergantin Corsario, siendo incomunicable y el rol de dicho bergantin, pues segun las circunstancias lo permiten espero de V. lo ejecute.

Dios y Libertad.—San Francisco, Noviembre 13 de 1839.

FRANCISCO GUERRERO.

Sor. Capitan de Puerto, Don Guillermo Richardson, Saucelito.

Filed in office July 10th, 1854. GEO. FISHER, Secretary.

Translation.—Exhibit No. 3, A. F. P. L., annexed to deposition of I. N. Thorne.

Justice Office of San Francisco.

The Chief Clerk of the Custom House at Monterey having presented himself at my office with an Expediente presented to the Justice of the Peace of said Monterey by Don Antonio María Osio, Collector, and you, as Captain of the Port, I request that the tripulation of the brig *Corsario* be brought ashore, it being unapproachable, and the manifest of said brig; and I hope you will comply herewith as soon as circumstances will permit.

God and Liberty.—San Francisco, Nov. 13, 1842. (year indistinct.)

[Signed] FRANCISCO GUERRERO.

To the Captain of the Port, Don Guillermo Richardson.

A true and correct translation. GEO. FISHER, Secretary.

Filed in office July 10th, 1854. GEO. FISHER, Secretary.

Deposition of Pablo de la Guerra.

UNITED STATES LAND COMMISSION, San Francisco, July 13th, 1854.

On this day, before Commissioner Alpheus Felch, came Pablo de la Guerra, a witness in behalf of the claimant, Josefa de Haro et al., in Case No. 101, who, after being duly sworn, deposed as follows, his evidence being interpreted by the Secretary.

Q. 1. Please state your name, age, and place of residence?

A. My name is Pablo de la Guerra; my age 34 years; my residence Santa Barbara, Cal.

Q. 2. Look at the paper marked Exhibit C, No. 1, filed in this case, and state if you are acquainted with the handwriting of Manuel Micheltorena and Manuel Jimeno; if yea, your means, as subscribed on the second page of said document are their genuine signature?

A. I am acquainted with the handwriting of both the persons named. I have very often seen them both write, and I believe these to be their genuine signatures.

Q. 3. In whose writing is the body of the document mentioned in the second question above written?

A. I think the portion of the document contained on the first and second pages in the handwriting of Tomás Soberanes.

Q. 4. Please state whether you are acquainted with said Tomás Soberanos; if yea, where he lived, and whether you have any knowledge of his having been employed as an Escribiente in the Government offices during the administration of Governor Micheltorena, and whether said Soberanos is now living or dead?

A. I was well acquainted with him; he was my clerk in the Custom House; he was Escribiente in the Custom House during the years 1843, 1844 and 1845, while Micheltorena was Governor; sometimes, when there was very little to do in the Custom House, I used to send him to assist Jimeno in the Secretary of State's office; said Soberanes is now dead; he died at Sonoma, or somewhere near there, I think, in 1848 or 1849; the Custom House and the Secretary's office were, at that time, both at Monterey.

Q. 5. Please state whether the paper on which the document above referred to within is of the proper stamp for the date of the document itself, and your means of knowledge?

A. In 1843 I was *Contador* in the Custom House; about the beginning of that year a new law on the subject of stamps was received, according to which new paper was to be issued every two years; but as one year under that law had already passed, the paper then issued was for one year only; the paper first issued was valid under the stamps for the year 1843 only; the law to which

I refer was a law of the Provisional Government, I think, under the Basis of Tacubaya.

Questions by Mr. McKune, Law Agent.

Question 1. Did you ever know said Tomàs Soberanes to write a grant for the Governor to sign?

Answer. He used to write everything that was given him to write in the Secretary's office, and I know that he did write some grants; I had one of my own written, if I remember right, in his handwriting; the grant to which I refer was one in the place called Nicasio, for two square leagues of land in Marin County.

Q. 2. Do you recollect having seen any other grant in his handwriting?

A. I have seen several, but I cannot specify them particularly.

Q. 3. Are you expert in judging of handwriting; if yea, state how you became so?

A. I caused myself to be expert in hand-writing which I have seen almost every day for several years; I mean, that when I have seen a person write almost every day for several years, I consider myself expert in judging of his writing.

Q. 4. Did Manuel Jimeno write slowly or rapidly, in making his signature?

A. I did not take out my watch to see; sometimes, when he had to sign many documents at one time, he signed them rapidly.

Q. 5. Was his signature uniform?

A. I believe it was, as far as uniformity can be expected in writing a name where a man has to sign a great many documents in a day.

Q. 6. At what part of the letter M did he commence, in writing that letter in his signature?

A. Generally, he commenced at the bottom, on the left hand side of the letter, and first Manl.; the first prong of that letter.

Q. 7. Did you ever know him to vary that form of commencing that letter, if so, when?

A. I do not recollect.

Q. 8. In making his rubric, was Jimeno uniform?

A. He changed his rubric; I cannot state at what time he changed it, but I remember the fact very distinctly; I remember that he simplified it; I asked him about it one day, and he said he had to sign so many documents, that it was rather troublesome to make so many marks; his rubric, appearing on the second page of the document, Exhibit C, No. 1, before mentioned, is as it was simplified.

Q. 9. What is the cause of the ink spreading more in the wri-

ting on the first and second page of this document, than is usual in documents written on the same kind of paper in 1844?

A. I do not know the cause; this is the same kind of paper used at that time; I know that the paper sometimes got damp, and the ink spread on it; I do not think this is much spread.

Q. 10. Was Micheltorena uniform in making his signature and rubric?

A. I answer the same, as in regard to Jimeno, in the answer to the fifth question.

Q. 11. Did he make his signature slowly or rapidly?

A. About as men generally do.

Q. Look at the ink on the third page of the document above mentioned, and compare it with the signature of Francisco Guerrero, appearing in the fourth page of the same, and give your opinion, whether they were written at the same time and with the same ink?

A. I think they were not written with the same ink; I cannot tell the time when they were written.

Question by Mr. Howard, for Claimants.

Question 1. State fully your means of knowledge of said Micheltorena and Jimeno's hand-writing?

A. I have seen Jimeno write almost every day, for several years, and aso Micheltorena, but the latter not so often as the former; Jimeno was my brothor-in-law.

PABLO DE LA GUERRA.

Subscribed and sworn to before me, this thirteenth day of July, A. D. 1854. ALPHEUS FELCH, Commissioner.

Filed in office July 13th, 1854. GEO. FISHER, Sec'y.
Recorded in Ev. B., Vol. 5, page 137. GEO. FISHER, Sec'y.

Deposition of A. A. Green.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA, }

San Francisco, July 13th, 1854.

This day, personally, appeared before Peter Lott, a Commissioner for taking testimony to be used before the Board of the United States Land Commissioners in said State, Alfred A. Green, a witness on behalf of the United States in Case No. 101, on the docket of said Board, wherein Josefa de Haro et al. are claimants; said witnesses being duly sworn, deposed, in English, as follows: [The counsel for claimants is present.]

Questions by United States Law Agent.

Question 1. What is your name, age and residence?

Answer. My name is Alfred A. Green, my age 25 years, my residence San Francisco County, California.

Q. 2. Are you acquainted with the Spanish language, and were you acquainted with the late Robert T. Ridley; if yea, how long did you know said Ridley, what was the character of your acquaintance with him, and when did he die?

A. I read and speak Spanish; I was acquainted with said Ridley; I first knew him in the spring of 1847; I was upon terms of intimacy with him for the last three years of his life; I had frequent business with him; our families were intimate, and he died at my house in the summer of 1851; I do not remember the month.

Q. 3. After said Ridley died, did you ever examine his papers, if yea, state your object, and whether you examined them particularly, and whether the document filed in this case, now shown to you and marked Exhibit C, No. 1, was among them?

Third question objected to by claimants' counsel. P. L.

A. I did examine his papers particularly, after his death; his widow asked me to cummunicate the intelligence of his death to his family, and I looked through his papers, to learn who his connections were; I do not remember seeing this document among his papers; I examined his papers twice; once only partially, the other time thoroughly.

Q. 4. Were you acquainted with Francisco Guerrero, and do you know his handwriting?

A. I was well acquainted with him, and know his handwriting; I have seen him write frequently, and have received communications from him.

Q. 5. Look at the name of said Guerrero as written on the fourth page of said document before shown to you, and state whether it is his genuine signature?

A. This is not his signature.

Q. 6. Are you acquainted with the Potrero property, if yea, how long have you known it?

A. I know the Potrero; have known it since the spring of 1847.

Q. 7. Was there any house or improvement on said Potrero when you first knew it?

A. There was none; no house.

Q. 8. Do you know when the first house was built on it?

(Eighth question objected to by claimants' counsel. P. L.)

A. It was about 1850, according to my recollection; it might have been in 1849.

Q. 9. How was the Potrero occupied from the spring of 1847 till the first house was built on it?

A. There was no occupation of it or on it till the latter part of 1849 or 1850; I rode over it in 1847, and there was a broken stone wall on it, and it was about the same in 1849.

Cross-examined by Claimants' Counsel.

Question 1. What papers did you read for the purpose of ascertaining said Ridley's relations?

Answer. I read a number of papers, both Spanish and English.

Q. 2. Was your examination confined to such papers as would be likely to give the information you sought?

A. It was not.

Q. 3. Will you translate the second paragraph of this document on the first page?

A. I will.

(The claimants' counsel, V. E. Howard, admits here, that the witness correctly and readily translates said paragraph.

PETER LOTT, Commissioner, &c.)

Q. 4. Look at the document now shown you, marked Exhibit No. 1, A. F. P. L., and state whether the name of Francisco Guerrero thereto subscribed, is his genuine signature?

(Fourth question objected to on the ground that the document forms no part of the case. P. L.)

A. To the best of my knowledge it is his genuine signature.

Q. 5. When did you first come to California?

A. On the 8th of March, 1847.

Q. 6. How long did you then remain here?

A. Some two or three months, I think; it may not have been so long.

Q. 7. Did you come in Col Stevenson's regiment, if yea, how long did you remain before you was ordered away?

A. I did come in said regiment, and I think remained some two or three months.

Q. 8. Was you ever on duty in that regiment here, if yea, how long?

A. I was at the Presidio on duty with said regiment off and on till the regiment was ordered off, some two or three months, according to the best of my knowledge.

Q. 9. Where did you go, and where did you reside from that time till 1849?

A. I went to Santa Barbara or La Paz, in Lower California, Mazatlan, and other portions of the peninsula, in the campaign; I arrived at Monterey in September, 1848, went to the mines,

and then came down here to the Mission Dolores about November, 1848, and have lived here mostly since.

Q. 10. Who was the captain of your company, and what company was it in said regiment?

A. I was in Company B; Captain Turner was the captain when we left New York; he returned to New York from Rio Janeiro, and the first lieutenant acted as captain from that time, and his name was Matzell.

Q. 11. Do you own or claim any interest in the Potrero land or have you at any time so owned or claimed any?

A. I have no claim or interest in them, nor had I ever any such.

Q. 12. Are you claiming a preëmption on any lands to which the de Haros assert a title?

(Twelfth question objected to for irrelevancy. P. L.)

A. I claim land under preëmption which some of the de Haros have told me they claim; others of them have told me they did not claim it.

Q. 13. What is the Mexican name of the rancho on which you claim preëmption?

A. I do not know precisely whose rancho I am on, or whether I am on anybody's.

Q. 14. What members of the de Haro family informed you that they did not claim the land on which you are located?

A. Mr. Charles Brown told me some two years ago that the de Haro claim did not cover the Bolsas, the land on which I reside; since then a sister of Mrs. de Haro's told me that they had no claim on it; that was Mrs. Valencia; she said she had petitioned for, but obtained no grant.

Q. 15. Are you not living upon a tract of land for which claim has been filed in the Land Commission in the name of the de Haro heirs, as being part of the rancho known by the name of Laguna de la Merced, and have you not employed counsel and attended here to resist the said claim on the very ground that you did know that it embraced the land on which you live?

A. I do not know the limits of the de Haro claim, and cannot say whether I live on the land embraced within it; I have employed counsel to resist the claim mentioned, for the purpose of having that claim placed where it belongs, and not to resist any just claim of the de Haros. A. A. GREEN.

Subscribed and sworn to before me this 13th day of July, 1854.

PETER LOTT, Commissioner, &c.

Filed in office, July 13, 1854. GEO. FISHER, Sec'y.
Recorded in Evidence, B. Vol. 5, page 147. GEO. FISHER, Sec'y.

Deposition of Vicente Miramontes.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA. }

San Francisco, July 13th, 1854.

This day personally came before Peter Lott, a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Vicente Miramontes, a witness on the behalf of the United States in Case No. 101, on the docket of said Board, wherein Josefa de Haro, et al., are claimants, and said witness being duly sworn on oath, deposed in Spanish, which was interpreted by the interpreter to said Board, as follows:

The claimants' counsel is present.

Questions by U. S. Law Agent.

Question 1. What is your name, age, and residence?

Answer. My name is Vicente Miramontes; my age is 44 years; I reside in San Francisco County, California.

Q. 2. Did you know Francisco de Haro and his sons, Francisco and Ramon, and the Potrero of San Francisco, if yea, how long have you known them?

A. I knew the said de Haros, and said Potrero; I have known the Potrero ever since I have known anything.

Q. 3. Had either of the said de Haros before named, at any time possession of said Potrero?

(3d question objected to by claimants' counsel. P. L.)

A. They had not; the Potrero was public to all the citizens for their cattle.

Q. 4. Where did Francisco and Ramon, the sons of Francisco de Haro, live?

A. They lived at the Mission Dolores sometimes, and sometimes at the Rancho San Bruno. They lived at their father's when at the Mission, and alone when on said rancho.

Q. 5. Did they ever live on said Potrero?

A. They never did.

Q. 6. Was there ever a house on said Potrero up to the American occupation of the country?

(6th question objected to by claimants' counsel. P. L.)

A. There was not.

Cross-examined by Claimants' Counsel.

Question 1. What are the boundaries of the Potrero?

A. It was between two esteras, and there was a spring and stony places on the west.

Re-examined by United States Law Agent.

Question 1. Which side of the Mission did the Potrero lie?
Answer. It was on the east of the Mission.

VICENTE MIRAMONTES.

Subscribed and sworn to before me, July 13th, A. D. 1854.

PETER LOTT, Commissioner, &c.

Filed in office July 13th, 1854. GEO. FISHER, Sec'y.
Recorded in Evidence B, volume 5, page 152. GEO. FISHER, Sec'y.

Deposition of Francisco Sanchez.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA, }

San Francisco, July 13th, 1854.

This day, personally came before Peter Lott, a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Francisco Sanchez, a witness on behalf of the United States in case No. 101, on the docket of said Board, wherein Josefa de Haro *et al.* are claimants, and said witness being duly sworn, on oath deposed in Spanish, which was interpreted into English by the interpreter to said Board, as follows:

The counsel for claimants is present.

Questions by United States Law Agent.

Question 1. What is your name, age and residence?

Answer. My name is Francisco Sanchez; my age 48 years; my residence San Francisco County, California.

Q. 2. How long and where in California have you resided; what offices have you held under the Government of Mexico, and what was the character of your acquaintance, if any, with Manuel Micheltorena and Manuel Jimeno?

A. I was born in California and have lived all my life in San Francisco County; I have held various offices, which I have enumerated in a former deposition, I think, in this case; I was personally acquainted with said Micheltorena and Jimeno.

Q. 3. Were you, when in office, in frequent correspondence, officially, with said Micheltorena and Jimeno, and did you often see documents signed by them; was you well acquainted with their handwriting, if yea, look at the paper marked Exhibit C, No. 1, filed in this case, and state whether the names of said Micheltorena and Jimeno, as subscribed on the second page of said document, are their genuine signatures?

A. I frequently saw their handwriting; have had official cor-

respondence with them, and became well aquainted with their signatures; I do not think either of these signatures genuine; I never saw Jimeno write like this; he wrote finer.

Q. 4. What was the character of Micheltorena and Jimeno as business men; did they ever use stamped paper, stamped on one year, for the purpose of making out documents in a different year, without re-validating the stamps?

A. They were correct men in their business, and they never used paper in a different year from that on which it was stamped, without re-validating the stamps.

(4th question objected to by claimants' counsel.)

Q. 5. Were you acquainted with Francisco Guerrero, if yea, state the extent of that acquaintance, and whether you was acquainted with his handwriting, and your means of knowing it?

A. I was well acquainted with him for many years; have often seen him write, and know his handwriting well.

Q. 6. Look at the same document before shown you, and state whether said Guerrero's name, as written on the fourth page thereof, is his genuine signature as he wrote it in the year 1845?

A. In my opinion, this is not his genuine signature; I knew his signature well in 1844 and 1845, and he always signed it much the same way, but not like this.

Cross-examined by Claimants' Counsel.

Question 1. Look at the two papers in envelopes, marked, the one Exhibit A, accompanying deposition of Juan Padilla in case No. 101, P. L., the other Exhibit B, accompanying deposition of Juan Padilla, case No. 101, P. L.; also, look at the paper marked Exhibit No. 3, A. F., P. L.; also, paper marked Exhibit No. 1, A. F., P. L., and at the Exhibit No. 2, A. F., P. L., and state which of the signatures of said Francisco Guerrero, thereon respectively written, are his genuine signatures and which are not genuine?

A. This on the enveloped paper, Exhibit A, &c., is his genuine signature; I am not certain about this on the enveloped paper, Exhibit B, &c.; it only has the F for his name; I do not recognize this as Guerrero's signature on either of the three papers marked Exhibit 1, A. F., P. L., Exhibit 2, A. F., P. L., or Exhibit 3, A. F., P. L.

(1st question objected to, so far as relates to the three last named documents. P. L.) FRANCISCO SANCHEZ.

Subscribed and sworn to before me on this 13th day of July, A. D. 1854. PETER LOTT, Commissioner, &c.

Filed in office July 13th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 5, page 146. GEO. FISHER, Secretary.

Deposition of T. Vasquez.

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA, } ss.

San Francisco, July 13th, 1854.

This day, personally came before Peter Lott, a Commissioner for taking testimony to be used before the Board of United States Land Commissioners in said State, Tiburcio Vasquez, a witness in behalf of the United States, in case No. 101, on the docket of said Board, wherein Josefa de Haro, et al., are claimants, and said witness being duly sworn, on oath, deposed in Spanish, which was interpreted into English by the interpreter to said Board, as follows:

The counsel for claimants is present.

Questions by the United States Law Agent.

Question 1. What is your name, age, and residence?

Answer. My name is Tiburcio Vasquez; my age 56 years; my residence San Francisco County, California.

Q. 2. Did you ever reside at the Mission Dolores, if yea, how long, and what office did you hold, if any, while there?

A. I have lived there; I do not remember precisely the time though; I lived there about four or five years; I was during that time (Administrador) of the Mission.

Q. 3. Are you acquainted with the Potrero property near said Mission, if yea, how long have you known it, and state whether it was occupied by any private person up to the time the Americans took possession of the country?

A. I have known said Potrero for more than fifteen years; when I was Administrator of the Mission I had it occupied with some cattle of my own and some of Francisco de Haro's cattle; I gave him permission to put his cattle there; there was no house on the land before the American occupation of the country.

Q. 4. Was you Administrator of the County when the Americans took possession of the country?

A. I was.

Q. 5. Did you ever know of Francisco de Haro, or the sons of said de Haro, making any improvement on the Potrero property?

(5th question objected to as hearsay, by claimants' counsel. P. L.)

A. I never knew of any except that de Haro and myself had a fence put around it to keep the cattle in.

Q. 6. Where did the sons of Francisco and Ramon de Haro reside till their death?

A. They lived at the Mission with their father; they then lived also at the Rancho of Laguna de San Bruno; they had a house at

the Mission and one also at the Rancho, and they lived at the one or the other of these places with their father till they died.

Q. 7. Did Ramon and Francisco ever claim the Potrero property while they had cattle running upon it?

A. They did not claim it as theirs; I gave them permission to put their cattle upon it; I do not know whether they asked for the land after I left the Mission; when the Americans came I left the Mission and everything and went away.

Q. 8. Is the Potrero property, or not, in sight from the Mission buildings, and if there had been a house on it, would you not have known it?

A. The Potrero lands were in sight of the Mission buildings; if there had been a house in them I would have seen it.

Cross-examined by Claimants' Counsel.

Question 1. Where did you live from 1840 to 1846?

A. I do not know how to count by years; I lived many years at the Mission, immediately preceding the American war.

Q. 2. Do you not know that Francisco and Ramon, the sons of Francisco de Haro, claimed and applied for, and obtained a grant of the Potrero lands, in the beginning of the year 1844?

A. I never knew of their claiming it, or asking for or obtaining a grant of it; if they had I think I should have known it.

Q. 3. Do you mean by your last answer, that they never obtained any grant from Government, provisionally or otherwise, of said Potrero lands, and that if they had obtained such grant you certainly would have known it?

A. I mean to say, that while I was there at the Mission they never obtained any kind of a grant of said lands, and that if they had I certainly think I should have known it, as I had charge of said lands.

Q. 4. How many years immediately preceding the war, did you reside, constantly reside, at the Mission?

A. Sixteen years, and perhaps more.

Re-examined by U. S. Law Agent.

Question 1. In your answer to 3rd cross interrogatory, you state that you had charge of the Potrero lands; state now whether you had such charge as administrator of the Mission?

A. It was as administrator of the Mission that I had such charge.

his
TIBURCIO X VASQUEZ.
mark

Sworn to and subscribed before me, this 13th day of July, A. D. 1854. PETER LOTT, Commissioner, &c.

Filed in office, July 13th, 1854. GEO. FISHER, Sec'y.
Recorded in Evidence, B. Vol. 5, page 143. GEO. FISHER, Sec'y.

Deposition of Josè Maria Covarrubias.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA. }

San Francisce, July 13th, 1854.

This day, personally came before Peter Lott, a Commissioner for taking testimony, to be used before the Board of United States Land Commissioners in said State, Josè Maria Covarrubias, a witness in behalf of the claimants, Josefa de Haro et al., in case No. 101, on the docket of said Board. And said witness being sworn, deposed in Spanish, which was interpreted by the interpreter to said Board, as follows;

The United States Law Agent is present.

Questions by Claimants' Counsel.

Question 1. What is your name, age, and residence?

Answer. My name is Josè Marià Covarrubias; my age forty-six years; my residence Santa Barbara County, California.

Q. 2. Are you acquainted with the handwriting of Micheltorena and Manuel Jimeno; if yea, state your means of knowledge?

A. I am acquainted with them; I have seen them both write; I was Secretary of the State of California under the Mexican Government.

Q. 3. Look at the names of said Jimeno and Micheltorena, as subscribed at the bottom of the 2nd page of the document marked Exhibit C, No. 1, and filed in this case, and state whether those are their genuine signatures?

A. I believe them to be their genuine signatures.

Q. 4. In whose handwriting is the body of the document to which they are so subscribed?

A. It is in the handwriting of Tomas Soberanes.

Q. 5. What was the occupation of said Soberanes?

A. He was one of the employees in the Custom House at Monterey.

Q. 6. Do you know of his being employed to write as a clerk for Jimeno or Micheltorena at any time?

A. I have seen him sometimes so employed, when there was a press of business in the office of the Secretary.

Q. 7. Were you acquainted with the usage and custom of the country in California, in the granting of lands?

A. I was.

Q. 8. Under the usage and custom of the Mexican Government in California, what was the effect of a provisional grant of land?

(8th question objected to by Law Agent. P. L.)

A. It was considered as firm and binding as the title itself.

Q. 9. Did it give the grantee a right to demand the title in form if he complied with the conditions of the provisional grant?

(9th question objected to by Law Agent. P. L.)

A. It did; the constitutional grant was as good as the title itself if the conditions were complied with, and conferred as much right upon the grantee.

Cross-examined by U. S. Law Agent.

Question 1. If the provisional grant was considered as firm and binding as a perfect grant, why the necessity for applying for a final grant?

(By Law Agent this answer objected to, as irresponsive to the answer. P. L.)

Answer. These things did not often occur, but it was understood that persons holding provisional grants intended to have them confirmed, and unless they failed to comply with the provisions, they were esteemed as good as a clear grant, unless it was revoked. The original, or rather the petition, was returned to the petitioner, with the marginal decree of the Governor Political Chief. The grantee occupied the land provisionally granted, and was considered to be in entire ownership thereof; in this belief he rested, and omitted what he perhaps ought to have done; that is to apply for a perfect title, but a provisional grant has been esteemed and held as the beginning of a right truly acquired, which has never been controverted in California.

Q. 2. Do you mean to say that a bare permission to occupy lands passed the fee from the Governor to the individual?

A. I do.

Q. 3. Could not the Governor at any time revoke a provisional grant?

A. He could not.

Q. 4. What do you mean when you say a provisional grant was esteemed as good as a clear grant, unless it was revoked?

A. Because it was firm and binding; as there was no way of revoking it.

(By Law Agent this answer objected to as irresponsive. P. L.)

Q. 5. Could not the Governor refuse to deliver a final grant, notwithstanding a provisional grant had been provisionally given?

A. No, he could not.

Q. 6. Suppose upon application the Governor should refuse to grant a perfect title, but should give the petitioner permission to occupy, what would be the effect?

A. I know nothing of any case of that kind.

(This answer objected to by Law Agent, as irresponsive. P. L.)

Q. 7. Was it not the duty of parties holding provisional grants,

to take the necessary steps to procure a final grant if they wished a title to the lands?

A. I believe the party rested in the good faith of the Government.

(Objected to by Law Agent, as irresponsive. P. L.)

Q. 8. Did Manuel Jimeno and Manuel Micheltorena write a uniform hand?

A. Yes, I believe they did; whenever I saw them write they wrote in the same manner.

Q. 9. Look at their names on the third page of the document now shown you, marked Exhibit No. 1, to the deposition of William A. Richardson, taken in case Number 101, H. I. T., and filed in the case, and state whether they are their genuine signatures?

A. I have no reason to believe they are not genuine, or to distrust them; I sometimos write my own name in the morning and don't write as even in the afternoon.

JOSE Ma. COVARRUBIAS.

Subscribed and sworn to before me, on this 13th day of July, 1854. PETER LOTT, Commisioner, etc.

Filed in office, July 13th, 1854. GEO. FISHER, Sec'y.
Recorded in Evidence, B. Vol. 5, page 140. GEO. FISHER, Sec'y.

Deposition of Julius K. Rose.

UNITED STATES OF AMERICA, } ss.
STATE OF CALIFORNIA, }

San Francisco, July 25th, 1854.

This day, personally, came before Peter Lott, a Commissioner for taking testimony to be used before the Board of United States Land Commissioners in said State, Julius K. Rose, a witness for claimant, Josefa de Haro et al, in case No. 101 on the docket of said Board; said witness being sworn, deposed as follows:

The United States Associate Law Agent present.

Question by Claimants' Counsel.

Question 1. What is your name, age, and residence?

Answer. My name is Julius K. Rose, my age 31 years, my residence San Francisco, California.

Q. 2. Were you acquainted with Francisco Guerrero in 1849, if yea, state the character of that acquaintance?

A. I became acquainted with him in August or September of that year. The first time I knew him I think was once when I called on Mr. Harvey, who was then my partner. He was shortly

after that elected Sub-Prefect of this District, and I was Secretary of the Prefecture, and our business led us into frequent intercourse and familiar acquaintance.

Q. 3. Did you see in said Guerrero's possession any document purporting to have been issued by Washington A. Bartlett, as Alcalde, relating to the title of the de Haro family to the Potrero of San Francisco, if yea, when; and state the purport of said document?

A. I saw a paper signed by said Bartlett as Alcalde, in Guerrero's possession; I think it was among some papers relating to said Potrero property which he handed to me; I think it was in the latter part of 1846 he handed it to me, and all the other papers pertaining to that property and other property of the de Haros, for the purpose of having the papers examined by me as an attorney, in order to have the proper information as to what was necessary to be done for the protection of the property of that family. The document was a general direction to all persons prohibiting them from commiting trespass upon said Potrero, and especially to forbid the cutting of any trees thereon. It contained a recital that complaint had been made by the de Haro, or the de Haros, of trespasses; that it appeared to his satisfaction that it was their property, and he therefore forbid such trespassing. I do not recollect the date of the document, though from what I understood from Guerrero it was a paper which had been obtained a year or two before the time I saw it. This paper remained among the other papers while they were in my hands, and I think was handed over with them by me when I resigned the administration of the estate. I do not recollect distinctly to whom I handed them, whether to Desaldo, the next administrator, or to some of the family at Guerrero's house.

Q. 4. Are you acquainted with Francisco Guerrero's handwriting, if yea, state your means of knowledge, and look at his signature on the fourth page of the document marked Exhibit C, No. 1, and filed in this case, and state whether it is his genuine signature?

A. I am acquainted with his handwriting, have frequently seen him write and sign his name, and have seen in my possession papers which I saw him execute. This appears to me to be his genuine signature, as far as I can judge; I should have paid a draft very quickly on that signature for any amount for which I would have trusted Mr. Guerrero. I think I was individually well acquainted with Guerrero's signature. His hand varied very much; sometimes when he wrote slowly his signature was quite different from his usual manner of writing.

Cross-Examined by U. S. Associate Law Agent.

Question 1. To whom, if to any officer, was this direction of the Alcalde made?

Answer. It was not directed to any officer; it was in the nature of a proclamation to all persons.

Q. 2. Did it contain any statement showing by what authority an Alcalde could issue such an order?

A. I did not.

Q. 3. Did it purport and claim to be an official document?

A. It did. It was an official paper. It was signed by Bartlett as Alcalde.

Q. 4. You have stated that Francisco Guerrero's signature varied at different times, can you state any particular cases in which you have seen him write his name slowly and others in which he wrote it rapidly?

A. I have seen him sign his name to deeds; I have one in my possession in which case he wrote deliberately and was very particular about his signature.

A. I have seen him sign his name as Sub-Prefect; there he was extremely particular. I have seen him sign his name to receipts in memoranda, little notes and the like, when he could write very rapidly and take no pains whatever; but in all cases there was a great deal of character to his signatures, so that I think I could not mistake them. He always wrote with more or less rapidity, but in signing more important documents he seemed to take more pains with his writing and his rubric. When he wrote more slowly or his writing was more accurate and plain.

JULIUS K. ROSE.

Subscribed and sworn to before me, July 25th, 1854.

PETER LOTT, Commissioner.

Filed in office, July 25th, 1854. GEO. FISHER, Sec'y.
Recorded in Evidence, B. Vol. 5, p. 219. GEO. FISHER, Sec'y.

Affidavit of Ramon de Zaldo.

No. 101. Josefa de Haro et al., Claimants. Personally appeared Ramon de Zaldo, who being sworn makes oath and says:

That in 1851, in August, he was appointed administrator of the estate of Francisco de Haro, deceased, *vice* Julius K. Rose, and received from him the papers and documents in relation to said estate; among said papers he found the titles to the rancho called Laguna de la Merced, to the Potrero, and to two lots—one 100-varas and the other 50-varas, both at the Mission Dolores—which

titles he handed to his counsel, Messrs. Clarke, Taylor & Beckh, for presentation before the United States Land Commission; that the title to the Potrero consisted of the provisional grant of Governor Micheltorena, and the absolute grant endorsed on the third page of said paper, which were all the papers connected with that tract of land which ever came into the possession of the affiant or into the hands of the present claimants, previous to the filing of their said petition before the Board; that affiant first became aware of the existence of the grant, or document, dated September, 1844, about two months since, in the court room of the Commission, immediately preceding the filing of the said paper. Affiant further states, that the petitioners, the claimants on the records in this case, are all women and children, and none of them know how to read and write, and never had any active agency in the prosecution of this claim for confirmation. That they were altogether incapable of attending to any such business, personally. Affiant further states, that he made all reasonable exertions to prepare the said case. Affiant further states, that from the knowledge which he has of the signatures attached to the said paper, he has no doubt of its genuineness. And that said document has been wrongfully withheld from the claimants in this case by some person or persons unknown to affiant Affiant is satisfied that the claimants in this case never knew of the existence of said document before its recent discovery.

RAMON DE ZALDO.

San Francisco, May, 1854.

Sworn to and subscribed before me this first day of May, A. D. 1854. Alpheus Felch, Commissioner.

Filed in office May 16th, 1854. Geo. Fisher, Secretary.
Recorded in Evidence B, volume 4, page 429. Geo. Fisher, Secretary.

Affidavit on Motion.

United States of America.

To the Marshal of Northern District of California:

You are hereby commanded to summon George R. Gliddon, San Francisco County, to appear before the Board of Commissioners to ascertain and settle Private Land Claims in the State of California, or some one of them, at their office in San Francisco, on the 19th day of May, at 10 A. M., 1854, to give evidence on behalf of the United States, in a case now pending before said Board, on the petition of Josefa de Haro et al., No. 101, and to

make due return hereof, according to law. Witness my hand and seal, at San Francisco, this 16th day of May, 1854.

GEORGE FISHER, Sec'y.

No. 101. Subpœna for Geo. R. Gliddon, issued May 16th, 1854. Return. Serve a copy of the within subpœna personally. George R. Gliddon, May 17th, 1854, in the City of San Francisco.

W. H. RICHARDSON, U. S. Marshal.
By W. H. Mc., Deputy.

Case No. 101. Before the Board of United States Land Commissioners, to ascertain and settle Private Land Claims in California:

THE HEIRS OF FRANCISCO DE HARO,
vs.
THE UNITED STATES.

J. H. McKune says on oath that, as the Agent of the United States, he proceeded to the issuance of the subpœna hereto attached, and that the said Gliddon has neglected and failed to appear and give his evidence, in obedience to said subpœna.

J. H. MCKUNE.

On the facts set out in the above affidavit, and the subpœna annexed, motion is made that the person of said Gliddon be attached and that he be punished for a contempt, and compelled to testify in said case. J. H. MCKUNE, Law Agent.

Subscribed and sworn to before me this 20th day of June, A. D. 1854. ALPHEUS FELCH, Commissioner.

Filed in office June 20th, 1854. GEO. FISHER, Secretary.

Exhibit C, No. 1.

[Sello primero ocho pesos.] Habiltado provicionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para el ano de mil ocho cientos cuarenta y tres.

MANUEL CASTANARES.
MICHELTORENA.

[SELLO.] Manuel Micheltorena, General de Brigada del Ejercito, Mejicano, Ayudante General de la plana, Mayor del mismo Gobernador Comandante General é Inspector del Departamento de Californias:

Por cuanto los ciudadanos, Ramon y Franco de Haro Mejicanos por nacimiento han pretendido para su beneficio y el de sus hermanos, previa licencia en forma de su padre Dn Franco de Haro el parage llamado el potrero en la ex-mission de Dolores situado en frente de las fabricas de la espresada ex-mission hacia la bahia

y cercado con pared de piedra en estencion de tres mil varas de largo e igual número de ancho poco mas ó menos cuyo terreno concedido provicionalmente y han justificado tenerlo ocupado con sus bienes, practicadas prevenidamente las diligencias y averiguaciones concernientes segan lo dispuesto por las leyes y reglamentos de la materia usando de las facultades que me confiere las mismas y de las amplias con que el supremo Gobierno me ha investido, à nombre de la nacion Mejicana y en renumeracion de los servicios y alcances contra la hacienda publica que hasta esta fecha tiene el espresado Dn Franco de Haro, padre de dichos Ramon y Franco de Haro, les concedo el mencionado terreno del Potrero, declarandoles la propiedad de el por las presentes letras pidiendo en virtud de este despacho tomar cuando les convenga la correspondiente posesion juridica. Por tanto mando que teniendose por firme y valedero el presente titulo se tome razon de él y se entregue à los interesados para su resguardo y demas fines.

Dado en Monterey a los diez y ocho dias del mes de Setiembre de mil ocho cientos cuarenta y cuatro. MICHELTORENA.

Manel Jimeno, Secretario.

En el pueblo de Yerba Buena á los cinco dias del mes de Marzo, de mil ocho cientos cuarenta y cinco, el ciudadano Juan Nepo. Padilla, Juez de Paz de dicha demarcacion dijo: Que en virtud de haber solicitado la posecion juridicia los ciudadanos, Ramon y Francisco de Haro, del parage nombrado el Potrero de la ex-Mission Dolores, que les fué concedido por el superior Gobierno del departmento, con fecha ocho del mes de Septiembre del año proxo pasdo como consta del presente titulo por el cual manda pasar al parage del potrero mencionado para proceder á la medicion y señalamiento de linderos que se ha pedido: Asi el Juez referido decréto mando y firmo. JUAN NEPO. PADILLA.

En el mismo dia mes y año pasó el Juez de Paz mencionado en el acto anterior acompañado de los testigos de asistencia al parage nombrado el Potrero de la ex-Mission de Dolores á efecto de dar la posesion juridica por los ciudadanos Ramon y Francisco de Haro, y puesto en la parte oeste del potrero se midieron tres mil (3,000) varas de largo hasta la orilla de la Bahia de San Francisco y del norte al sur otras tres mil varas, resultando que dicho Potrero contiene tres mil varas de terreno en cuadro ó poco mas, del cual se les dio la posesion juridica mediante las formalidades de derecho, y para la devida constancia lo firmo el juez con los testigos de asistencia. Doy fé. JUAN NEPO. PADILLA.

Gregorio Briones,
Francisco Guerrero, } Testigo de ass'a.

Filed in office March 2d, 1854. Geo. Fisher, Sec'y.

Translation of Exhibit C, No. 1.

[Third seal eight dollars.]—Issued provisionally by the maritime Custom House of the port of Monterey, in the Department of the Californias, for the year one thousand eight hundred and forty and MICHELTORENA.
MANUEL CASTANARES.

[SEAL.] Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the main Staff of the same, Governor General, Commandant and Inspector of the Department of the Californias:

Whereas, the citizens Ramon and Francisco de Haro, Mexicans by birth, have solicited for their personal benefit and that of their brothers, having first had permission from their father, Don Francisco de Haro, a place called El Potrero, in the ex-Mission of Dolores, situate in front of the buildings of the aforesaid ex-Mission towards the bay, and enclosed by a stone wall, being in extent three thousand varas long and an equal number in breadth, a little more or less, which land has been granted to them provisionally, and which they are found to have in actual occupation with their property.

Having previously had the necessary proceedings and information as provided by the laws and regulations relating to the matter, in the exercise of the powers conferred to me by the same, and of the ample powers with which I have been invested by the Supreme Government, in the name of the Mexican nation, and in consideration of the services and of the credits which the aforesaid Don Francisco de Haro, father of the said Ramon and Francisco de Haro, has, up to this date, against the public treasury, I grant to them the aforesaid land del Potrero, declaring them owners in full property by these letters patent, being entitled by virtue of this despatch to have the corresponding juridical possession whenever they may think fit.

Therefore, I order that the present title, being held as firm and valid, that note of it be taken, and that it be delivered to the interested parties for their security and other purposes.

Given at Monterey on the eighteenth day of the month of September, one thousand eight hundred and forty-four.

MANUEL MICHELTORENA.

MAN'L JIMENO, Secretary.

At the pueblo of Yerba Buena, on the fifth day of the month of May, of the year one thousand eight hundred and forty-five, the citizen Juan Nepo. Padilla, Justice of the Peace of the said district. said: That whereas the citizens Ramon and Francisco de Haro have solicited for the juridical possession of the place called El Potrero, of the ex-Mission of Dolores, which was granted to them

by the Superior Government of the Department, on the eighth day of the month of September of the last year, as appears by the present title, by which I order that we should proceed to the place—the said el Potrero—to proceed with the survey and the establishment of boundaries which have been asked for. The aforesaid Judge thus decreed, ordered and signed it.

JUAN NEPO. PADILLA.

On the same day, month and year, the Justice of the Peace, mentioned in the foregoing decree, accompanied by the assisting witnesses, proceeded to the place called El Potrero, of the ex-Mission of Dolores, to give the juridical possession solicited by the citizens Ramon and Francisco de Haro, and being situated on the west part of El Potrero, three thousand (3,000) varas in length were measured to the edge of the bay of San Francisco, and from north to south other three thousand varas; resulting that the said Potrero contains three thousand square varas of land, or a little more, of which juridical possession was given in the formality of law, and that it may appear, the Judge signed it with the witnesses in assistance, I certify. J. N. PADILLA.

F. GUERRERO, } Asst. witnesses.
G. BRIONES, }

Filed in office March 2, 1854. Geo Fisher Secty.

Amended Petition.

To the Honorable Alpheus Felch, Thompson Campbell and R. Aug. Thompson, United States Land Commissioners for the adjudgment of Land Titles in the State of California:

The amended petition of Josefa de Haro, Candelaria de Haro, Natividad de Haro, Prudencia de Haro, Alonzo de Haro, Charlotte de Haro and Rosalia de Haro, original petitioners, and who are heirs at law of Francesco de Haro, Jr., and Ramon de Haro and Francisco de Haro, Senior, respectfully represents:

That, as set forth in their original petition, they are the claimants of a certain tract of land in the County of San Francisco and State of California, known as El Potrero, situated in front of the ancient Mission of Dolores, bounded as follows: on the north by the estuary or Mission Creek, on the east by the bay of San Francisco, on the west by a stone wall and fence, extending from said Mission Creek to a creek or estuary emptyi. g into said bay, and which separates said tract of land from the Rancho of Cármen Bernal, and constitutes the southern boundary of the said petitioners' claim, which will appear more fully and at large, by reference to

the title papers and concessions on file in this case, issued by the Governor of California, Manuel Micheltorena, dated respectively May the first, A. D. 1844, May the 24th, A. D. 1844, and the 18th day of September, A. D. 1844, and granted to said Ramon and Francisco de Haro, Jr.

The petitioners further allege, that said last mentioned paper was either lost by the legal representatives of said Francisco and Ramon, after their decease, or was, by some evilminded person or persons, abstracted or purloined from the possession of the same, and has only been discovered and regained by petitioners within the last few weeks, all of which will be made manifest by the proof at the hearing.

The petitioners make known to your Honorable Board, that they claim to have a good title to said land, by virtue of said papers, concessions and grants. A full compliance with the conditions of the same, and all the requirements of the colonization ~~lands~~ laws of 1824 and 1828.

Wherefore, they pray that this amendment be allowed, and for decree of title in confirmation.

V. E. HOWARD, for Claimants.

Filed in office March 4th, 1854. GEO. FISHER, Secretary.

Affidavit of Geo. R. Gliddon.

UNITED STATES BOARD OF LAND COMMISSIONERS, }
For the State of California. }

No. 101. Josefa de Haro et al. Claimants. Personally appeared Geo. R. Gliddon, who being duly sworn, makes oath and says: That he is and has been, for some time, the agent of Mrs. Robert T. Ridley, widow of the late Robert T. Ridley, deceased. That in examining her papers, which came into her possession after the decease of her said husband, from his, Ridley's papers, he found among them the document filed in this case, containing the grant to the Potrero in this case claimed, dated September 18th, 1844: and perceiving that it did not properly belong to the papers of the said estate, but was an important paper for the heirs of Francisco and Ramon de Haro, he delivered the same to Mr. E. L. Beard, whom affiant knew to be one of the principal parties in interest under said title. Affiant does not know how said Robert T. Ridley became possessed of said document.

May 3d, 1854. GEO. R. GLIDDON.

Subscribed and sworn to before me this 4th day of May, A. D. 1854. WM. L. HIGGINS, Notary Public.

Filed in office May 16th, 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, Vol. 4, page 428. GEO. FISHER, Secretary.

Affidavit of E. L. Beard.

UNITED STATES LAND COMMISSION,
Of the State of California.

No. 101. Josefa de Haro et al., Claimants. Personally appeared E. L. Beard, who being duly sworn, makes oath and says: That some time in January last he was informed by George R. Gliddon that he had discovered among some papers in his charge, what he believed to be the original grant and act of juridical possession, for the tract of land known as the Potrero, being the same claimed in this case; that affiant subsequently procured the same from said Gliddon, which document proved to be the grant dated the 18th September, 1844, with the act of juridical possession thereon endorsed. That after a thorough scrutiny and investigation, as to the genuineness of said document, he handed the same to J. B. Throckmorton, for the purpose of being placed in evidence in this case, or claim. From all the information which affiant could obtain in relation to the history of the said paper, he has no doubt that it is genuine, and that the grant and juridical possession were respectively executed at the time they bear date, and that the document has, for several years, been wrongfully withheld from the heirs and legal representatives of Ramon and Francisco de Haro.

E. L. BEARD.

Subscribed and sworn to before me, on this 16th day of May, A. D. 1854. WM. A. CORNWALL, Notary Public.

Filed in office May 16th. 1854. GEO. FISHER, Secretary.
Recorded in Evidence B, volume 4, page 428. GEO. FISHER, Secretary.

Second Amended Petition.

No. 101. UNITED STATES LAND COMMISSION, FOR THE STATE OF CALIFORNIA:

The amended petition of Josefa de Haro, Candelaria de Haro, Natividad de Haro, Prudencia de Haro, Alonzo de Haro, Charlotte de Haro, and Rosalia de Haro, heirs at law of Francisco de Haro, Senior, and Ramon and Francisco de Haro, Junior.

Your petitioners respectfully represent that at the time of filing the original petition in this case, they were all either minors or married women; that they are Mexicans by birth, and do not speak the English language; that they had no knowledge of legal proceedings, or the practice of the Courts; that after the death of Francisco and Ramon de Haro, and of their father, Francisco de Haro, Senior, the papers in relation to the property generally, and

of this claim in particular, fell into the hands of administrator's agents and attorneys employed to attend to the business. Petitioners had very little knowledge of what the papers were, or of their nature and contents. They believed them to be genuine and sufficient. Petitioners had at that time no knowledge of the existence of the paper or grant dated the 18th September, 1844, until within a few weeks past. It was found by parties interested with your petitioners in the confirmation of the said claim, among some other papers in the Mission, as petitioners are informed and believe. They allege that said title has either been lost by their father or late brothers during their lifetime, or had been abstracted by some evil minded persons, and withheld from the possession of your petitioners. Petitioners further allege that the said tract of land in said original petition, and by this amendment claimed, is the same tract known as the Potrero, situated in the County of San Francisco and State of California, in front of the ancient Mission of Dolores, bounded and more particularly described as follows; On the North by the Estuary or Mission Creek; on the East by the Bay of San Francisco; on the West by a stone wall and fence extending from said Mission Creek to Creek or Estuary emptying into said Bay, which separates said tract from the Rancho of Cármen Bernal, and constitutes the southern boundary of claimants' lands, all of which will more fully appear by reference to the said grants and juridical survey; and that the land granted and designated in the document, dated the 18th September, 1844, is the same land described and claimed in the original petition, and the title papers filed with, and made a part of, said petition. Petitioners allege that they had made all the exertions in their power to discover the papers and proofs connected with their case, before the same was filed, and had used due diligence for that purpose. They therefore pray that this amendment be filed, and allowed as a part of their petition in this case, and that decree for confirmation of title be entered.

V. E. HOWARD, Counsel for Claimants.

And the Law Agent now here excepts to the above order, allowing the amendment of the petition.

Filed in office, May 16th, 1854. GEO. FISHER, Secretary.

Motion to strike out Papers, etc.

In the matter of the petition of the heirs of Francisco de Haro and Ramon de Haro, to obtain a confirmation of a tract of land in the County of San Francisco, Case No. 101, called the Potrero of

San Francisco, motion to strike out from the files of said case the paper attached to the deposition of Abel Stearns, with the names of Jimeno, and Micheltorena, Padilla, Guerrero, and Briones, therein written, for the following reasons:

1st. Because said document was not filed within the term prescribed by law.

2d. Because it purports to be an original grant, and it was not presented to this Board before the 4th of March, 1853.

3d. Because no mention of said document appears in the petition filed before the Board, praying confirmation.

4th. Because said document describes a different piece of land from the description in the petition.

5th. Because there are other good and sufficient reasons why this motion should be granted.

J. H. McKUNE, Law Agent.

Filed in office, March 21st, 1854. GEO. FISHER, Secretary.

Objections of the United States Law Agent, to Deposition of J. K. Rose.

Objected to the second deposition of Julius K. Rose, on the ground it was hearsay evidence, and evidence of written documents and contents thereof, without showing loss and search.

Filed in office, July 25th, 1854. GEO. FISHER, Secretary.
Recorded in Journal, Vol. 3, page 735. GEO. FISHER, Secretary.

Objections of Law Agent.

JOSEFA DE HARO ET AL. *vs.* THE UNITED STATES. } No. 101.

Before the United States Board of Land Commissioners, to ascertain and settle private land claims in California.

The Law Agent objects against the introduction in evidence of the document purporting to be a grant from Micheltorena, of the date of September, 1844, and all the writing in said paper, filed in office March 2d, 1854, on the following grounds:

1st. It is not written on paper of the proper stamp.

2d. It is not proved to be genuine.

3d. It was not filed in due season, and the petition did not claim a confirmation of claim, founded on said grant.

The Board severally overruling said objections, which ruling

was excepted to by the Law Agent, and the same is assigned as error.

J. H. McKUNE, Law Agent.

Filed in office, July 25, 1854. GEO. FISHER, Secretary.
Recorded in Journal, Volume 3, page 735. GEO. FISHER, Secretary.

Proceedings of Probate Court.

BE IT REMEMBERED, That on the eleventh day of July, A. D. one thousand eight hundred and fifty, in Probate Court, in the County of San Francisco, present Hon. R. W. Morrison, Probate Judge, the following proceedings were had in the words and figures following, to wit:

In the matter of the Estate of }
FRANCISCO DE HARO, deceased. }

On reading and filing the petition of J. K. Rose, for letters of administration in the above estate, it was Ordered, That the usual notice be given by posting, until Monday, 22d day of July, at 10 o'clock, A. M.; and afterwards, to wit: On the 22d day of July, the following proceedings were had, in the words and figures following, to wit:

In the matter of the Estate of }
FRANCISCO DE HARO, deceased. }

Public notice having been given of the application of Julius K. Rose for letters of administration in the above estate, it is therefore Ordered, That said Julius K. Rose, on filing a bond with approved securities, in the sum of eight thousand dollars, be appointed administrator of said estate; and afterwards, to wit: on the 31st day of July, A. D. 1850, the following proceedings were had, in the words and figures following, to wit:

In the matter of the Estate of }
FRANCISCO DE HARO, deceased. }

Pursuant to order heretofore issued, Julius K. Rose appeared and presented his bond in the sum of eight thousand dollars, which was approved; upon order of the Court letters of administration were issued to said Julius K. Rose upon the above estate.

I, Thomas Hayes, County Clerk for the County of San Francisco, do certify the foregoing to be a true and correct copy of

proceedings had in the above mentioned estate, as appears from the records of the Probate Court, now remaining in my office.

[L. S.] Witness my hand and the seal of the Probate Court, affixed this 25th day of July, A. D. 1854.

THOMAS HAYES, Clerk.
By DENIS LYONS, Dep'y Clerk.

Filed in office July 25th, 1854. GEO. FISHER, Secretary.

Opinion by Commissioner Farwell.

JOSEFA DE HARO ET AL. *vs.* THE UNITED STATES. } For a place called Potrero de San Francisco, containing —.

The petitioners in this case derive title from Ramon de Haro and Francisco de Haro, Jr., to whom they allege that grants were made by the Mexican authorities in the year 1844.

It appears that the said Ramon and Francisco were both killed during the war with America in the year 1846, leaving Francisco de Haro, Sen., their father, their only heir at law, inheritor of whatever interest they may have had at their decease, and the said Francisco de Haro, the elder, died about the year 1850, leaving the present claimants his sole heirs, with full right of inheritance of all interest, either in law or equity, of the said Ramon and Francisco, Jr., deceased.

It appears that the said Ramon and Francisco, Jr., made application for a grant to the land in question in the year 1844, and in pursuance of which it is alleged that grants were issued, and the petitioners have offered in evidence what purports to be a provisional grant from Governor Micheltorena, dated the first of May 1844, in which a right of occupancy is conceded to the applicants, subject to certain conditions therein expressed.

They have also offered in evidence a document bearing date the 24th day of the same month, and purporting to have been issued by Governor Micheltorena, confirming the former concession and making the same absolute and unconditional.

They have also offered in evidence another grant to the same persons purporting to have been issued by Micheltorena, dated the 18th day of September 1844, to which is appended the usual conditions.

The document which purports to be a grant from Micheltorena, dated the ~~24th~~ of May 1844, was filed in the office of the Secretary of this Board on the 30th of March 1853, and formed the basis of the claim of the petitioners, and a large amount of testimony was

taken with a view of establishing its authenticity, and also on the part of the Government to the discredit of the same; and the proofs, when taken together, leaves the question without a doubt, that the grant was a forgery.

On the 2d day of March, 1854, the claimants placed on file the grant, dated the 18th day of September 1844, and thereby virtually abandoning the one on which they first sought to obtain a confirmation.

The fact of the first grant being clearly a fraud and an attempt to practice an imposition upon the Board, and the second grant being offered in evidence at so late a date and after the claimants had failed to make out a case on the first grant, is well calculated to create a suspicion that would justly subject the whole proceedings to the closest scrutiny.

The last grant offered and the one on which the petitioners now base their claim, it appears by the testimony of Mr. Gliddon, was found a short time previous to its filing herein, among the papers of Mr. Ridley, deceased, who was the husband of one of the present claimants, and who died some time in the fall of 1850.

The first document, embracing the concessional grant and the ratification, is shown to have been in the hands of the said Ridley, and was seen by several witnesses in the year 1849, and the contents of the second page, constituting the ratification or what purports to be a grant from Governor Micheltorena, was not then upon it.

Ridley presented it for the inspection of counsel with a view to having legal proceeding instituted in ejectment against persons who had got possession of parts of the land, and no pretence was then set up that any other title was in existence.

This document it seems was not deemed sufficient to warrant the bringing suits against the occupants, inasmuch as it was determined that the document only granted a right of occupancy in the grantee and was insufficient to entitle the interested party to that action in ejectment; and in addition to this it appears that the papers of Ridley were examined thoroughly on several occasions after his death and nothing of this grant was discovered.

In reference to the genuineness of the signatures of Governor Micheltorena and Secretary Jimeño to this document, I think the weight of evidence is in its favor, independent of circumstances which is calculated to lead to a distrust of the same.

This document has also attached to it a document which purports to be the proceedings of a Justice of the Peace, in giving juridical possession, which is dated the 5th day of May, 1845, and signed by Juan N. Padilla, as Justice of the Peace, and Francisco Guerrero and Gregorio Briones, as assisting witnesses.

Pablo de la Guerra and Josè M. Covarrubias testify, that the body of the grant is in the handwriting of one Tomàs Soberanes, and it appears from the evidence that the said Soberanes died in the year 1849.

Padilla swears that he gave the judicial possession on the day of the date thereof, and Briones, the assisting witness, swears that he was present and assisted in giving said possession, and that it was done at the time of its date and that he signed the proceedings on the same day.

It is by no means an easy task to reconcile the apparent conflict of testimony in this case.

The presentation of the provisional grant, together with that which purports to be a ratification of the same on the part of Governor Micheltorena, which is beyond a doubt a fraud, and the mysterious manner in which the last grant was discovered, and at a time when their efforts in establishing the genuineness of the second grant, when taken together, is well calculated to taint the whole proceedings in the case on the part of the claimants, and lead to distrust that which would otherwise have appeared fair and legitimate.

And had this case been presented by the grantees in its present shape, it would scarcely be entitled to serious consideration.

But the grantees having both died, nearly at the same time, and their affairs falling into the hands of their father, and he dying soon after, and the papers falling into the hands of Ridley, the brother-in-law of the grantees, and he having died soon after the decease of the father, renders it quite possible that this document may have been in the possession of the father and the son-in-law Ridley, and they have no knowledge of the fact.

There is no other way of reconciling the testimony of Pablo de la Guerra, and J. M. Covarrubias, who testify that the document is in the handwriting of a man who died in 1849, which, if true, would preclude the presumption that it was manufactured in 1854, at a time when the claimants had made a failure in establishing the authenticity of first grant.

And also the testimony of Padilla, who swears to the giving of judicial possession in May, 1845, and that of Briones, who testified that he was one of the assisting witnesses. The testimony of those two witnesses is clear and unquestionable, and if true, settles the question of the genuineness of the grant last filed.

They both swear that the proceedings were had on their part agreeable to the certificate of Padilla, attached to the grant, and written on the same sheet of paper at the time it bears date. They testify to acts done by them concerning which they could not possibly be mistaken.

The attorneys for the Government have not made the least attempt to impeach the testimony of those two witnesses, leaving us to presume that they were unimpeachable, and that what they have sworn to is truth, and if so, this claim is valid and a decree will be entered confirming the same. CONFIRMED.

Filed in office Nov. 6th, 1855. GEO. FISHER, Secretary.

Decree.

JOSEFA DE HARO, ET AL., *vs.* THE UNITED STATES. } No. 101.

In this case, on hearing the proofs and allegations, it is adjudged by the Commission that the claim of the said petitioners is valid, and it is therefore decreed that their application for a confirmation thereof be allowed.

The land, of which confirmation is hereby given, consists of three thousand varas square, situate in the ex-Mission of Dolores, in San Francisco County, in front of the buildings of said Mission, and to be hereafter located according to law, having for its boundaries on the north the Mission creek, on the east the bay of San Francisco, on the west a stone wall, and on the south the land of Carmel Bernal.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL.

Filed in office November 6th, 1855. GEO. FISHER, Secretary.

Order.

And, it appearing to the satisfaction of this Board, that the land hereby adjudicated is situated in the Northern District of California, it is hereby ordered that two Transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the Secretary, one of which Transcripts shall be filed with the Clerk of the United States District Court for the Northern District of California, and the other be transmitted to the Attorney-General of the United States.

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the Private Land Claims in the State of Cal'a.

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the private land claims in the State of Califor-

nia, do hereby certify the foregoing two hundred and three pages, numbered from one to two hundred and three, both inclusive, to contain a true, correct and full Transcript of the record of the proceedings and of the decision of the said Board, of the documentary evidence and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 101, on the docket of the said board, wherein Josefa de Haro, et als., are the claimants against the United States, for the place known by the name of "Potrero de San Francisco."

In testimony whereof, I have hereunto set my hand and affixed my private seal (not having a seal of office), at San Francisco, California, this tenth day of January, A. D. 1856, and of the Independence of the United States of America the eigh—— [Seal.]

GEO. FISHER, Secretary.

(Endorsed)—Filed January 15, 1856. JOHN A. MONROE, Clerk.

Appeal Notice.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
WASHINGTON, 11th February, 1856.

(101.) "Potrero de San Francisco."

Josefa de Haro et al, claimants.

You will please take notice that in the above case decided by the Commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the first day of February, 1856, the appeal in the District Court of the United States for the Northern District of California, will be prosecuted by the United States.

C. CUSHING, Attorney General.

Endorsed—Filed April 4th, 1856. JOHN A. MONROE, Clerk,
By Wm. H. Cheevers, Deputy.

Petition.

UNITED STATES DISTRICT COURT.

THE UNITED STATES,
vs.
JOSEFA DE HARO, ET AL. } D. C. 381, L. C. 101.

The petition of the United States by their attorney, represents that this cause is a review of the decision of the U. S. Land Commission, whereby the claim of the appellees was confirmed, as ap-

pears by reference to the record in the case; that a transcript of said record was filed in this Court on the 15th January, A.D. 1856; that a Notice of Appeal was filed April 4th, A.D. 1856; that the land claimed lies in this District, and that said claim is invalid.

Wherefore, appellants pray that the said decision of the said Land Commission be reversed, and that this Court decree said claim invalid. San Francisco, April 21st, 1857.

WM. BLANDING. U. S. Attorney.

Endorsed—Filed April 21st, 1857. JOHN A. MONROE, Clerk,
By Wm. H. Cheevers, Deputy.

Deposition of José de la Cruz Sanchez.

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, April 28th, 1857.

On this day, before the District Court of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came José de la Cruz Sanchez, a witness produced on behalf of the United States in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 101, on the docket of the said Board of Commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Clinton Palmer, a sworn interpreter:

Present—The United States District Judge, the United States District Attorney, and V. E. Howard, Esq., for the claimants.

Questions by Distriet Attorney.

Question 1. Where did you reside in 1845?

Answer. At the Mission of Dolores; the eldest Francisco de Haro was married to one of my sisters; Francisco and Ramon were my nephews; I was Alcalde in 1845.

Q. 2. Was judicial possession ever given of this land at the Potrero?

A. No; it never was.

Q. 3. Were you familiar with transactions and localities such as that you would have known it if judicial possession had been given?

A. Yes, I was, for it would have been my duty to give it as Judge; I know that Juan N. Padilla was removed from office in 1845; I don't remember that Francisco Guerrero held an office in 1845; he came up as Sub-Prefect from Monterey; it was in 1845 or 1846; he had his office at the Mission Dolores; he never had an office in Yerba Buena.

Q. 4. Do you know of any right Francisco and Ramon de Haro had to this land?

Question objected to.

A. It was loaned to them provisionally by the government; they had a dairy or milk rancho; they kept cows there; the public generally pastured their cattle on it; there was no house on it, nor any cultivation on it previous to the coming of the Americans; they pastured their cows on it, and people generally had their cattle on it. I know the general character for truth and veracity of Juan N. Padilla; he was false to his word and to everything; it would be necessary for me to have the questions asked him, before I could tell whether to believe him or not.

Cross-examined.

I testified in this case before the Commission; I don't remember that one paper which all said was genuine, I declared to be false, and one that all said was false, I declared to be genuine; I know my own character for truth; I never told a lie under oath; I have frequently testified before the Commission.

J. DE LA C. SANCHEZ.

Sworn to and subscribed April 28th, 1857, before me.

W. H. CHEEVERS, Deputy Clerk.

Endorsed—Filed April 28th, 1857. JOHN A. MONROE, Clerk,
By W. H. CHEEVERS, Deputy.

Deposition of Gregorio Briones.

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, April 18th, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Gregorio Briones, a witness produced on behalf of the United States in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. and
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Q. 9. Was Francisco Guerrero present?

west to the east.

pears by reference to the record in the case; that a transcript of said record was filed in this Court on the 15th January, A.D. 1856; that a Notice of Appeal was filed April 4th, A.D. 1856; that the land claimed lies in this District, and that said claim is invalid.

Wherefore, appellants pray that the said decision of the said Land Commission be reversed, and that this Court decree said claim invalid. San Francisco, April 21st, 1857.

WM. BLANDING. U. S. Attorney.

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Present—The United States District Judge, the United States District Attorney, and V. E. Howard, Esq., for the claimants.

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A. It was loaned to them provisionally by the government; they had a dairy or milk rancho; they kept cows there; the public generally pastured their cattle on it; there was no house on it, nor any cultivation on it previous to the coming of the Americans; they pastured their cows on it, and people generally had their cattle on it. I know the general character for truth and veracity of Juan N. Padilla; he was false to his word and to everything; it would be necessary for me to have the questions asked him, before I could tell whether to believe him or not.

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J. DE LA C. SANCHEZ.

Sworn to and subscribed April 28th, 1857, before me.

W. H. CHEEVERS, Deputy Clerk.

Endorsed—Filed April 28th, 1857. JOHN A. MONROE, Clerk,
By W. H. CHEEVERS, Deputy.

Deposition of Gregorio Briones.

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, April 18th, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Gregorio Briones, a witness produced on behalf of the United States in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 101, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows, his evidence being interpreted by William N. Meeks, a sworn interpreter:

Present—V. E. Howard for claimants; United States District Attorney by H. S. Brown.

Questions by U. S. District Attorney.

Question 1. Your name, age, and place of residence?

Answer. Gregorio Briones; 60; I reside in Marin County.

Question 2. Were you sworn in this case before the Land Commission?

Answer. Yes they did.

Q. 3. Were you sworn as a witness in the case of Josefa de Haro about the Rancho Potrero Nuevo?

A. It was in the case of the ~~suit [of] de~~ Haro about a small Potrero near the coast.

Q. 4. Since that time, at your own house, in the presence of your own son, Pablo Briones, James Gordon, and others, did you state that you never had signed any paper giving juridical possession of a grant of land to the de Haros, Ramon and Francisco, or anything tantamount to that?

A. There was some conversation; both my wife and self were sick at the time, and my mind was not clear as to the matters about which they questioned me; my son Pablo, who acted as interpreter, was not familiar with the English language, and I do dot know what Pablo told them at the time; I said to them that I would remember better afterwards; I afterwards remembered that I had signed some paper, and I also remembered about the measurement of some land.

Q. 5. Did a man by the name of James Gordon, or if you do not know the name, did not an American act as interpreter on that occasion?

A. My son Pablo told him all that was said; there was another man there who talked with Pablo and explained to him what was said.

Q. 6. Did this other man talk in Spanish?

A. A very little; I did not understand his Spanish, and my son Pablo explained to me what he said.

Q. 7. Did you at that time state that you did not know that juridical possession had been given to the de Haros?

(Question objected to, on the ground that the Government cannot impeach its own witness.)

A. I then stated that I did not know what juridical meant, and I do not know now.

Q. 8. Look at Exhibit C, No. 1, annexed to the deposition of Abel Stearns, and filed in the office of the Secretary of the Board of Land Commissioners, March 2d, 1854, and state if that is your genuine signature, if so, when, where, and in whose presence did you sign it?

A. I acknowledge that as my signature; I don't know how to read and cannot recognize the paper, though I know my signature; I signed it when it was brought to me; I signed it in the Mission Dolores, in the presence of—at the request of the deceased Haro—the old man; I don't remember when I signed it; it was a long time ago; Haro and I were together; there was nobody else there, but a man who stood outside waiting, one Theodosio Flores.

Q. 9. Was Francisco Guerrero present?

A. The day that I signed it, no, he was not.

Q. 10. Was Juan N. Padillo present at the time the paper was signed by you?

A. Padilla went about during the measurement time; he was not present at the time the paper was signed.

Q. 11. How long after the measurement that you speak of, was it when you signed the paper?

A. About two months.

Q. 12. Who was Governor of California at that time?

A. I think Mr. Bautista Alvarado was Governor at that time.

Q. 13. What do you know about any measurement of this land?

A. I only know that I saw them measuring it; but they never told me what was the extent of it, or how much.

Q. 14. At the time the land was measured that you speak of, who was Governor?

A. Have not I told you that it was Don Bautista Alvarado; I am not certain, but I think it was.

Q. 15. What makes you think that Alvarado was Governor at that time?

A. I have no reason for thinking so, but I think he was Governor.

Q. 16. Where did you come from to the Mission on that occasion, the occasion last referred to?

A. I came from Monterey.

Q. 17. Did you not remain at the Mission building all the time during the measurement?

A. As soon as the measurement was finished I remained behind the church in conversation with some persons, and from there I started away.

Q. 18. Do you know or can you point out the land now, that was measured at that time?

A. Going there I can very well point it out.

Q. 19. Do you know whether the property that was measured at that time was the "*Potrero Viejo*" or the "*Potrero Nuevo?*"

A. At the time spoken of, the land had no such name, whatever its name may be now, Potrero Viejo or Potrero Nuevo.

Q. 20. Was not José Cornelio Bernal present at that measurement?

A. He went about there with me.

Q. 21. How did they measure this property?

A. They measured it with a rope, or "*mecate*," going about on horseback, they tied knots in the *mecate* and measured from place to place.

Q. 22. How many sides were run?

A. They ran from the north to the south, and from the northwest to the east.

Q. 23. They ran them only on two sides of the tract?

A. The two sides only.

Q. 24. Did they run these lines through the tract or on the sides?

A. One went along on the side and the other went through the middle.

Q. 25. Who induced you to go before the Land Commission and testify in this case?

A. The deceased William Richardson called me to go and testify.

Q. 26. What did he tell you when he called on you to testify?

A. He called me to go up stairs in the building there, to give my testimony as to what I saw when present at the measurement.

Q. 27. What did you reply to him?

A. I said nothing to him.

Q. 28. On the 11th August, 1856, at your own house in Bolinas, did James Gordon propound to you the following question: "Did Mr. Richardson ever have any talk with you with regard to this grant?" and did you answer the same as follows: "Yes, Mr. Richardson asked me to go over and testify; I told him I did not know anything; that I was over there but like a stupid man," (*un tonto*)?

(Question objected to.)

A. Gordon asked me the above question; it is certain that I made the above reply to Richardson, (because I was invited to accompany them as friend, not as a witness; afterwards they asked me to sign it as a witness.) The above remark in parenthesis I made to the deceased de Haro, when he asked me to sign the paper referred to in question 8. After I had signed it I asked de Haro if he wanted my signature three hundred times, that I would give it to him.

Q. 29. Did you also tell Gordon, on the occasion before referred to, that Mr. Richardson told you what you must testify to just before you gave your testimony, and at the door of the Land Commission?

(Question objected to.)

A. He told me that I would have to testify as to what I saw of the measurement which was made whilst I was present; I don't know who is Gordon.

Q. 30. Look at the paper marked C. McA. C., and state whether your genuine signature is attached to that or not, and if the contents of the paper were interpreted to you previous to signing it.

(Question objected to.)

A. That is my genuine signature. No, it was not interpreted to me before I signed it; they were talking to me at the time about it through Pablo, who did not understand English well; they brought the paper to me and talked about it, and I signed it.

Q. 31. Was not that paper C. McA. C. drawn up in your presence, every word of it?

A. Yes, it was written there; the gentlemen were seated at the table and I was seated by; they talked about it, but Pablo did not know how to explain, and I did not know what the questions were that were put.

(This answer objected to unless the paper is marked as an appendix and attached to this deposition.)

(U. S. Attorney claims the above deposition as a cross-examination, had for the purpose of laying the foundation to impeach.)

GREGORIO BRIONES.

Subscribed and sworn to before me, this 18th April, 1856.

CUTLER MCALLISTER, U. S. Commissioner.

[PAPER MARKED "C. McA. C."]

Deposition of Gregorio Briones, in regard to a grant of land called Potrero Nuevo, to Francisco and Ramon de Haro.

Question. Do you know anything about a grant of land to Francisco and Ramon de Haro, called the Potrero Nuevo?

Answer. I do not know anything about it; there were cattle running on the land, but do not know to whom they belonged; was told they belonged to the de Haro's, but do not know it of my own knowledge.

Q. At what time were these cattle there?

A. I do not remember; it was before the Americans had possession of the country, but don't remember how long before; a year after I saw the cattle there, I was coming from Monterey, and at that time there were no cattle there; the lands appeared to be abandoned or were abandoned.

Q. Do you know what you testified to in the Potrero case, before the Land Commissioners at San Francisco?

A. I do not remember; they asked me questions, one here and one there, so that I was confused and did not know what I said.

Q. Did you sign any paper giving the juridical possession of such a grant of land to the de Haros?

A. I never signed any such paper; I am certain I never did.

Q. Did you sign any paper to the grant of the Potrero Nuevo

A. No.

Q. Neither as a witness or otherwise?

A. No.

Q. Do you know if juridical possession was ever given to the de Haro's, of this grant?

A. I do not.

Q. Did you know Francisco Guerrero?

A. Yes.

Q. Did you ever, with Guerrero, assist in giving possession of any lands to any person or persons?

A. I did, but only once, and never at any other time, and that was to give possession of some lands at Saucelito to the children of William Richardson.

Q. How came your name appended, as an assisting witness, to the juridical possession of the Potroro to the de Haro's?

A. I never signed any such paper; if my name is there, it is a forgery; I may have signed a paper without knowing its contents.

Q. Who got you to go over to testify in this case, before the Commissioners?

A. William Richardson, of Saucelito.

Q. Did Mr. Richardson ever have any talk with you in regard to this grant?

A. Yes, Mr. Richardson asked me to go over and testify; I told him I did not know anything; that I was over there but like a stupid man, (*un tonto.*)

Q. Did Mr. Richardson tell you what you must testify to, and at what time and place?

A. Yes, at the door of the Commission, just before I gave my tertimony.

Bolinas, August 11, 1856. GREGORIO BRIONES.

Witnesses present:

JAMES GORDON,
PABLO BRIONES.

"C. McA. C."

Endorsed—Filed April 28th, 1857. JOHN A. MONROE, Clerk.
By W. H. Cheevers, Deputy.

Deposition of V. P. Gomez.

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, April 28th, 1857.

On this day, before the District Court of the United States, for the Northern District of California, came Vicente Gomez, a witness produced on behalf of the United States in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 101 on the docket of the said Board of Commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Clinton Palmer, a sworn interpreter.

Present—Hon. Ogden Hoffman, District Judge; the U. S. District Attorney, and Volney E. Howard, counsel for claimant.

[NOTE.—The witness, before giving his testimony, was assured by the District Attorney that no statements he might make, criminating himself, would be used against him.]

Question by U. S. Attorney.

Question. Look at the grant in this case, dated 18th Sept., 1844, marked Exhibit C, No. 1, filed in U. S. Commission, March 2d, 1854, annexed to deposition of Abel Stearns, and state what you know, if anything, concerning it?

Answer. I have known this as a title in the hands of Mr. Brown, and also Mr. Blanding. At the time I wrote this title it had not the rubric of Micheltorena, and that of Castañares at the top was not there. The signature of Micheltorena was very lightly traced, and this one of Manuel Jimeno, next it, was not there. George Gliddon showed me a *borrador*, or rough draft, of a provisional concession of the Potrero, and told me a title had been issued but that the parties had lost it. The title had been given to the Haros. Gliddon told me to write this because the title had been lost, and in order that it might show the parties had preserved a *borrador* of their title, which had been lost; I then wrote the first two pages under the assurance that the *borrador* was dated in 1844. I saw that it was *habilitado* for 1843; there was then no stain over the "*tres*," and the rubrics were not there; I did not think he would present it in any Court, for it was a very shameless proceeding; Gliddon told me it should never be presented as a title, but merely as a rough draft; I did not write the signatures of Micheltorena or Jimeno; the signature of Micheltorena was very lightly traced; it is never very plain; this was in 1850; Mr. Brown thought this was intended as a fraud, but it was merely intended as a blotter, and I never thought Mr. Gliddon would present so ridiculous a thing as this to the Court. This is all the offence I have committed. Mr. Blanding and Mr. Brown called me one evening, and I was afraid and told them I had written it in 1844. The paper was written while the Land Commission was taking testimony; it was written in Monterey.

Questions by Mr. Brown.

Q. How long is it since you had the last conversati[illegible]

A. Four or five ~~times~~ Mr. Brown told me that this [illegible] to be a forgery, and I did not want to be persecuted a[illegible] came under a subpœna to tell the truth about it. [illegible] told me, about five or six months ago, that this paper had been

A. I do not.

Q. Did you know Francisco Guerrero?

A. Yes.

Q. Did you ever, with Guerrero, assist in giving possession of any lands to any person or persons?

A. I did, but only once, and never at any other time, and that was to give possession of some lands at Saucelito to the children of William Richardson.

Q. How came your name appended, as an assisting witness, to the juridical possession of the Potroro to the de Haro's?

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A. William Richardson, of Saucelito.

Q. Did Mr. Richardson ever have any talk with you in regard to this grant?

A. Yes, Mr. Richardson asked me to go over and testify; I told him I did not know anything; that I was over there but like a stupid man, (*un tonto.*)

Q. Did Mr. Richardson tell you what you must testify to, and at what time and place?

A. Yes, at the door of the Commission, just before I gave my tertimony.

Bolinas, August 11, 1856. GREGORIO BRIONES.

Witnesses present:
JAMES GORDON,
PABLO BRIONES.

"C. McA. C."

Endorsed—Filed April 28th, 1857. JOHN A. MONROE, Clerk.
By W. H. Cheevers, Deputy.

Deposition of V. P. Gomez.

UNITED STATES DISTRICT COURT,
Northern District of California.

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Present—Hon. Ogden Hoffman, District Judge; the U. S. District Attorney, and Volney E. Howard, counsel for claimant.

[NOTE.—The witness, before giving his testimony, was assured by the District Attorney that no statements he might make, criminating himself, would be used against him.]

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Questions by Mr. Brown.

Q. How long is it since you had the last conversation with me?

A. Four or five ~~times~~ days Mr. Brown told me that this was proven to be a forgery, and I did not want to be persecuted about it, so I came under a subpœna to tell the truth about it. Mr. Gliddon told me, about five or six months ago, that this paper had been

placed in the Commission as a *borrador* and promised to return it to me. I came one night to the Tehama House; Gliddon was there, a little in liquor, and I asked him for the paper. He told me not to speak of it bofore the person who was with me, and promised to return it to me.

Cross-Examined.

Am 33 or 34 years old; I came here from Monterey; I am not a native of Monterey; was born in Guadalajara; first came to California in the beginning of 1836; have resided here a long time—about two years; I have been occupied in taking care of my family; I have no business except to take care of the interests of my family. Mr. Thompson once gave me $10 to pay my expenses after I had been here ~~a few~~ days; I have not received anything in this case; no one has promised me anything; the only thing I expect to be paid for is the subpœna.

Q. How much do you think that is worth?

A. Whatever the law allows.

Q. If you thought this was a bad transaction how came you to ~~make~~ it?

A. I wrote it as a *borrador*, and was assured that no bad use should be made of it.

Q. Did it not arouse your suspicions?

A. If I had suspected anything neither friendship nor money would have induced me to make it.

Q. What use did you suppose would be made of it?

A. It was merely made to show that a title had existed, and I told Mr. Gliddon that it was ridiculous on account of the dates. I was a clerk in the Government employ, and have written out titles by order of my superiors. I therefore knew the forms. The signature of Micheltorena was there, but so imperceptible that no one would have supposed it could be used as a title. I don't recollect in what month this was; can't say whether it was spring, summer, fall or winter, in the year 1850 or 1851.

Q. Of what use was such a *borrador*?

A. I was asked for a form of a title and I gave it.

Q. Who of the persons now in Court first asked you to give your testimony?

A. Mr. Brown. Mr. Blanding first spoke to me about the grant. I may have spoken about this paper to many persons; they have threatened me about it. Mr. Crane got some letters of mine from Monterey and compared it. Mr. Gliddon told me that it had been sworn by Pablo de la Guerra the grant was in the handwriting of Soberanes.

[The witness, at request of claimants' counsel, writes the grant

on the dictation of the interpreter. Said paper is appended to this deposition, and marked Exhibit A. A. O. H.]

I put in that it was made by the consent of the de Haros because that was the regular form in such cases. I know the name of Manuel Jimeno was not on the paper; I have already sworn so. I did not state that I knew the de Haros had a provisional title. I knew they had a *borrador*, or rough draft of it. I was not shown the original.

Q. You say you made this innocently, as a form; how do you expect to be punished for it?

A. Because I have made a confession of what I have done. I don't consider I have committed a crime; those who committed the crime were Gliddon and those who forged the signatures. The form was made for the purpose of showing that an original title had issued. I was an officer of the Secretary of the Government from the time Micheltorena came to Monterey to the time he went away. After that I still continued in the Commissary's department. When I was in the *Secretaria* it was my business to copy grants.

Q. How do you know this is the same paper you made for Gliddon?

A. I know it by the dates of 1843 at the beginning and 1844 at the end, and also because it is my handwriting.

Direct Resumed.

I wrote the grant with a quill pen. The copy I have made in Court I wrote in part to the word "piedra," on the 7th line from the bottom with a steel pen, and from there down with a quill pen. I always wrote while in the Government of Mexico with a quill pen. I have sometimes appeared as a witness for the Government, and sometimes for the claimants, but generally for the claimants.

Question by Claimant's Counsel.

Q. If you were writing a form only how came you to write the boundaries?

A. I do not know them. Gliddon told me them. He wrote a description of them. I did not mean to give a general form because they vary in particular cases. This was a correct form for that case.

Question by the Court.

Mr. Gliddon did not give me anything for this. He did not have anything; on the contrary I used to take him to the theatre and to my room. I have often seen Micheltorena write. This is so well done that if I had not known I should have sworn it to

be genuine. The paper was all blank except the *habilitado* and the signature to the grant. Have frequently seen Mr. Jimeno write. This is not his genuine signature, in my judgment; it closely resembles it, however. He generally signed at some distance from the signature of Micheltorena. I don't know by whom these signatures were made. I first saw this paper after I had written it, in the hands of Mr. Brown and Mr. Blanding. Gliddon told me that he wanted this to protect the interests of the family. That was also my motive.

VICENTE PERF'TO GOMEZ.

Sworn to and subscribed April 28, 1857, before me.

W. H. CHEEVERS,
Deputy Clerk of said Court.

Exhibit A. (O. H.) attached to deposition of V. P. Gomez.

Manuel Micheltorena, General de Brigada del Ejército Mejicano, Ayudante General de la Plaza Mayor del mismo, Gobernador Comandante, General é Inspector del Departamento de California.

Por cuanto los ciudadanos Ramon y Francisco de Haro, Mejicanos por nacimiento, han pretendido para su beneficio personal y el de sus hermanos, previa licencia en forma de su padre Don Francisco de Haro, el paraje llamado el Potrero, en la ex-Mision de Dolores, situado en frente de las fábricas de la espresada ex-Mision, hácia la bahía y cercado con pared de piedra en extencion de tres mil varas de largo, é igual número de ancho, poco mas ó ménos, cuyo terreno tienen concedido provicionalmente, y han justificado tenerlo ocupado con sus bienes.

(Endorsed.)—Filed April 28, 1857.

JOHN A. MONROE, Clerk.
By W. H. Cheevers, Deputy.

Deposition of Benito Diaz.

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, April 28th, 1857.

On this day, before the U. S. District Court for the Northern District of California, duly authorised to administer oaths, etc., etc., came Benito Diaz, a witness produced on behalf of the United States, in Case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in Case No. 101, on the docket of the said

Board of Commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Clinton Palmer, a sworn interpreter:

Present—Ogden Hoffman, Judge of the said Court; the District Attorney, and Mr. Howard, counsel for claimant.

Questions by District Attorney.

Question. What office did you hold under the Mexican Government?

Answer. I was employed in the Custom House from 1835 to 1846, when the Americans took possession. There were two or three years during that time in which I was not employed on account of the revolution. I was first employed at Santa Barbara, then at Monterey, and afterwards at San Francisco. I knew Francisco Guerrero, formerly sub-Prefect of this city. He did not have any rooms in the Custom House. It was not occupied by any one; the building was not finished. He did not have a room in the building I occupied. I was familiar with the mode of granting lands in California.

Q. Look at this grant (Exhibit C, No. 1, attached to deposition of Abel Stearns, filed before Commission March 2d, 1854) and say whether it is in the usual form, and if not, in what it differs?

A. I find some faults with this grant. There is no "*toma de razon*," or order, that note be taken of the title; nor is there any note that razon has been taken, which was usually done. There is also nothing said about informers. I see that there is an order that note of this be taken, but there is no note of its having been recorded. It has also the greatest fault it could, for the stamp is of 1843, and the date is 1844. I have had conversations with Gliddon last year in Mexico.

Q. State those conversations?

(Objected to by claimants' counsel. Taken subject to exceptions.)

A. We were talking about money matters. He said he never had felt so sorry for any money in his life as for the $15,000 given to him for this title, which he had lost at a bank. I then asked him what he had to do with De Haro's title. He then told me he had forged this title, and had got Vicente Gomez to write it for him. This was about the substance of the conversation. I don't remember the particulars of it. I have not much knowledge of Micheltorena's signature. I know Jimeno's signature; have seen him write. I don't dare to say whether it is false or not; it looks very like. The judicial possession is ordinarily an expediente apart; it contains ten or twenty pages. I never saw a juridical possession like this on an original grant. Sometimes judicial pos-

session was given before the grant was approved, and sometimes not until after. The National Independence Day was the 16th September. It was customary to stop all public business on that day, and sometimes for a week after; but generally for two or three days they were engaged at bull fights, bear fights, etc., and did not attend to any business. Juan N. Padilla was, in 1845, first Alcalde of Yerba Buena.

Q. Was it the custom for an inferior officer to summon a superior to be an attesting witness to his acts?

A. It was not.

Q. Which was the superior; the sub-Prefect or the Alcalde?

A. The sub-Prefect was the highest in rank. Francisco Guerrero was sub-Prefect in 1845.

Q. If paper stamped for 1843 was used for a grant in 1844, what would be the effect?

Question objected to.

A. It would be null. Manuel Castañares was, in 1842 and 1843, Administrador of the Custom House in Monterey. His successor was Pablo de la Guerra. He entered on his office at the end of 1843, or the beginning of 1844. It was in December, 1843, or January, 1844. A party petitioning for a grant, took the stamped paper to the Government. The paper was issued and sold in the Custom House. The seal of the Secretary of the Government is wanting on this paper. The seal on this paper is that of the Custom House. In issuing grants it was usual to affix the Government stamp to the title papers.

Q. Look at the third page and state if you ever saw any expediente of a juridical possession resembling that written on this grant?

A. It is altogether different. It does not look like a juridical possession. It is unlike any act of juridical possession I ever saw.

Q. Was there any stamped paper issued for 1843?

A. There was some late in 1843. I know that Juan N. Padilla was removed from his office. I don't know in what part of the year. It was in 1845. Sanchez would know when it was.

Q. Look on the fourth page, at the signature of Francisco Guerrero—do you know his signature?

A. I know his signature very well. It is not his signature. It resembles it very little.

Cross-examined.

I was first applied to to give testimony in this case about a month ago. A man named Crane wrote to me to come to San Francisco; did not state for what purpose. He gave money for

my expenses; don't recollect how much; five and ten dollars at a time. Crane wrote to me again at Monterey, saying there would be a subpœna issued for me. I have not had any conversation with any settler on the Potrero. Have talked with Mr. Crane, Mr. Brown, and Mr. Blanding. I received some money by mail at Monterey, from Mr. Crane. I have received in all $60, besides $20 to pay my expenses up here. All I know about it is that I received it from Mr. Crane. It must have belonged to some one else, for Mr. Crane has no means. I have an idea where the money came from; I don't know positively; I never asked Crane. All I know is that I got it in my pocket. I have only received enough to pay my expenses; no more has been promised.

Direct resumed.

Question. Do you recollect whether, in 1843, any eight dollar paper was issued?

Answer. Yes, and here is this; I was not in Monterey in 1844; I was there in 1843; I know Gomez's handwriting; have seen him write. This grant is in his handwriting; I know it by the writing, and also because Gliddon told me so, and Gomez told me so himself.

BENITO DIAZ.

Sworn to and subscribed April 28, 1857, before me,

W. H. CHEEVERS, Deputy Clerk.

Endorsed—Filed April 28, 1857.

JOHN A. MONROE, Clerk.
By W. H. Cheevers, Deputy.

Deposition of Pablo Briones.

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, April 28, 1857.

On this day, before W. H. Cheevers, Deputy Clerk of the United States District Court for the Northern District of California, duly authorised to administer oaths, &c., &c., came Pablo Briones, a witness produced on behalf of the United States, in Case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in Case No. 101, on the docket of the said Board of Commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by Clinton Palmer, a sworn interpreter.

Present: The United States District Attorney, and Volney E. Howard, Esq., for the claimants.

Questions by United States Attorney.

My name is Pablo Briones; am thirty-four years of age, and reside in Marin county, California; I know Juan N. Padilla; I have known him since the year 1843. During the time of the revolution, in 1846, he had command of a party of men, about sixty-three in number; they were in Sonoma.

Question. Do you know of him having any fights or engagements? if so, when and with whom?

(Question objected to by counsel for claimants.)

Answer. I heard of his having one with a party of Americans; I do not know it myself, not being present; I joined his company the second day after the engagement; I joined with Padilla; he had command of the militia; I remained in the company three days; I don't recollect how long Padilla was in command of the company, but think about two months.

Q. Are you the person whose name is subscribed to a statement or document made by your father, Gregorio Briones, at Bolinas, Agust 11th, 1856, and annexed to the deposition of your father, taken before a commissioner of this Court, on the 18th April, 1857, in this case?

(Paper is here shown to the witness.)

A. I am; my father subscribed his name to that document before me in my presence.

Q. On that occasion was there an interpreter present?

A. We did not understand him very well, nor did he understand us very well; he spoke part American and part Spanish; so far as I was concerned I think he understood me better than I did him; his name was Gordon.

Q. Did you and Gordon interpret that document to your father?

A. We did; I speak English very little; I comprehended mostly what Gorden said to me; what I could not understand in English he explained to me in Spanish.

Q. Did your father understand the questions and answers as explained by Gordon and yourself?

A. That day there was something the matter with my father's head; he said he could not remember what was said to him because he was wandering; they would ask questions; I saw them writing; I did not know what they were writing.

Q. The questions and answers in said document having been translated to you by the interpreter, state whether the questions are the same that were propounded to your father, and whether the answers therein were made by your father in reply thereto?

(Question objected to because the witness has already said his father did not understand the questions and answers, and because the question is leading.)

A. I believe they are the same.

Q. After the paper was written containing the questions and answers, was the same read to your father before signing?

A. He heard what the interpreter was translating to us, but we did not know whether it was what was written on the paper.

Q. State whether the translation made by Gordon on the 11th day of August was the same as the translation just made to you by Mr. Palmer, the interpreter?

(Objected to as leading.)

A. I don't recollect every word that was said at that time, but most of it corresponds.

Cross-examined.

Question. What was your father's sickness at that time?

A. Sometimes he is troubled with dizziness in the head, and then he can't attend to anybody; he has been subject to this disease twenty years; whenever a cold wind blows he is affected with it; he is unfit for business when he is that way. My father stated there publicly that he was not in a condition to attend to the questions and answers; I cannot tell whether my father understood those questions and answers; he said himself he did not. Three other men came with Mr. Gordon at the time these questions and answers were written down; they said the Vigilance Committe were going to take my father down to San Francisco; they did not say that they belonged to the Vigilance Committe; none of these four men said anything about the Vigilance Committee; it was another man in Bolinas that said the Vigilance Committee intended to take my father to San Francisco; just before those four men got to the house this man said there comes the Vigilance Committee to take your father down to San Francisco to give testimony about some land; a boy up there showed my father the eye of the Vigilance Committee a short time before they arrived; my father said nothing.

Direct resumed.

Those gentlemen treated my father and myself well, politely; nothing unpleasant occurred between them and us; they told my father all they wanted was the facts.

PABLO BRIONES.

Sworn to and subscribed April 28th, 1857, before me,
W. H. CHEEVERS, Deputy Clerk.

Endorsed—Filed May 6th, 1857.

JOHN A. MONROE, Clerk.
By W. H. Cheevers, Deputy.

Deposition of Spear Riddell.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES,
vs.
JOSEFA DE HARO, ET AL.

San Francisco, May 9, 1857.

On this day, before J. Edgar Grymes, a special Commissioner and Referee, appointed by the District Court of the United States for the Northern District of California, duly authorised to administer oaths, &c., &c., came Spear Riddell, a witness produced on behalf of the United States in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in California, in case No. 101, on the docket of the said Board of Commissioners, and was duly sworn, and testified as follows:

Present—U. S. District Attorney, and Volney E. Howard for claimants.

Question by U. S. District Attorney.

Question 1. What is your name, age, and place of residence?

Answer. My name is Spear Riddell, my age 27 years, and reside in San Francisco.

Q. 2. What is your business, how long have you been engaged in it, and what are your duties?

A. I am paying teller in the banking house of Drexel, Sather & Church; I have been engaged there about four years; my business is chiefly paying out money on checks; my office requires me to examine signatures continually.

Q. 3. Look at the papers marked Documents Nos. 1, 2, 3, A. F., annexed to the deposition of Isaac N. Thorne, filed in office July 10th, 1854; also, at the document marked Exhibit C, No. 1, annexed to the deposition of Abel Stearns, filed in office March 2d, 1854, and state whether in your opinion the signatures of Francisco Guerrero in those documents were made by the same person?

(Question objected to by claimants' attorney as incompetent.)

A. No, sir; I should not think they were made by the same person?

Q. 4. Admitting the signatures upon Exhibits Nos. 1, 2, and 3, A. F. to be genuine, would you pay a check bearing the signature of Francisco Guerrero as appears on document marked C, No. 1, annexed to the deposition of Abel Stearns?

(Question objected to as illegal.)

A. No, sir, I would not upon Exhibit C, No. 1; I would not honor the signature.

Q. 5. Look at Exhibit C, No. 1, on the third and fourth pages, and state your opinion in regard to the ink with which the body of the instrument, the signatures of Juan N. Padilla, and the words of "*testigos de assistencia*" are written?

(Question objected to as incompetent.)

A. The ink used in the body of the deed appears to me to be of a darker color than that used in writing the words of "*testigos de assistencia*," and the signature of Francisco Guerrero.

Q. 6. State your opinion whether the ink with which the name of "Gregorio Briones" is written, is the same as that used in the body of the instrument, and the other signatures?

(Question objected to as incompetent.)

A. I should suppose that it is written with the same kind of ink as that used in making the signature of Francisco Guerrero.

Q. 7. Please state whether in your opinion the signatures now before you on said Exhibits were made with the same pen?

A. I could scarcely express an opinion upon that point.

Q. 8. Look at the document marked H. I. T., No. 1, annexed to the deposition of Wm. A. Richardson, filed in office March 30th, 1853, and state whether the signature of Manuel Jimeno appearing on the second page, and the signature of Jimeno at top of the third page, are made by the same person who made the signature of Manuel Jimeno as appears on the second page of document marked C, No. 1, annexed to the deposition of Abel Stearns, now presented to you?

A. No, sir; I should think that the signatures were not made by the same person; the signature upon the document marked H. I. T., No. 1, appears to me to be made in a finer style of handwriting than that in document C, No. 1, and also to occupy a shorter space; the handwriting in document H. I. T., No. 1, is very clear and clerkly in its appearance, than in the signature upon document C, No. 1, which is executed with considerable coarseness; there is also a small dash omitted in the signature Manuel in document C, No. 1, which dash appears to have been made with care.

(Question objected to as incompetent.)

Q. 9. Are you familiar with the flourishes or rubrics attached to signatures, if so, please state whether the rubrics of the signatures you have last spoken of, differ in any degree or kind?

A. I would not wish to pass judgment in this case.

Q. Look at the signatures of Jimeno and Micheltorena on the second and third pages in document marked H. I. T., No. 1, annexed to the deposition of Wm. A. Richardson, and state whether their respective signatures are made by the same person?

(Question objected to.)

A. In my opinion they are not made by the same person.

Q. Compare the signatures of Micheltorena on document marked H. I. T., No. 1, with the ink used in the body of the instrument, and with the signature of Jimeno, and state whether the ink used in Micheltorena's signatures is the same?

A. The signature of Micheltorena on the third page of document H. I. T., No. 1, appears to have been written with blacker ink than that written on page No. 2.

Cross-examined.

Question 1. Do you read or speak Spanish?

Answer. No sir.

Q. 2. When did you first see these papers and grants, which you have been comparing and examining, and testifying in relation to?

A. It was some five or six weeks ago, as far as I can remember.

Q. 3. Who invited you to examine them?

A. Mr. Bradshaw.

Q. 4. Did Mr. Bradshaw tell you what interest he had in it, or did he mention to you whether he was a settler or squatter on the land?

A. No sir; he made no declaration.

Q. 5. Did you understand Mr. Bradshaw's motive in getting you to examine these documents and papers?

A. I presumed that he was interested, although he did not say so.

Q. 6. Did he go with you to examine the papers at the Surveyor General's office?

A. He accompanied me to Montgomery block, third floor; I do not know what office it was; I was there but once.

Q. 7. Do you observe any difference in the paper on which the two grants are written?

A. The document marked C, No. 1, seems to me to be somewhat coarser paper than the document H. I. T., No. 1.

Q. 8. Is there not a difference in the texture and character of writing whether there is a difference in the fineness and coarseness of the paper?

A. It would effect the texture of the writing to some extent, according to the fineness and finish of the surface of the paper on which the writing might be executed; I do not think it would affect the character of the writing.

Examination resumed.

Question. Did Mr. Bradshaw, at the time he spoke to you, intimate to you whether he was interested in the confirmation or defeat of this case?

Answer. He did not.

Q. Do you know Mr. Bradshaw personally?

A. I never knew him by name, previous to my accompanying him.

Q. You say that the document marked C, No. 1 is coarser paper than document marked H. I. T., No. 1; if so, is not the signature of Juan N. Padilla, on first named document, as light as the signature of Jimeno, and lighter than the signature of Micheltorena on the second named document.

A. I cannot perceive any difference in the execution which I would attribute to the different kinds of paper upon which the two documents are written, SPEAR RIDDELL.

Sworn to and subscribed before me May 9th, 1857.

J. EDGAR GRYMES, Special Commissioner.

Deposition of B. R. Nisbett.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES,
vs.
JOSEFA DE HARO ET AL.

San Francisco, May 9th, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee, appointed by the District Court of the United States for the Northern District of California, duly authorised to administer oaths, etc., etc., came Benj. R. Nisbett, a witness produced on behalf of the United States, in Case No. 381, being an appeal from the Board of Commissioners, to ascertain and settle the private land claims in the State of California, in Case No. 101 on the docket of the said Board of Commissioners, and was duly sworn, and testified as follows:

Present: United States District Attorney, and Volney E. Howard for claimant.

Questions by United States Attorney.

Question. What is your name, age and place of residence?

Answer. My name is Benjamin R. Nisbett, my age 25 years, and reside in San Francisco.

Q. Look at the document marked H. I. T., No. 1, annexed to the deposition of Richardson, and state whether the signatures of Jimeno, on the second and third pages, were made by the same person, in your opinion, who made the signature Manuel Jimeno,

on the second page on document C, No. 1, as now shown to you?

Question objected to by claimants' attorney, as incompetent.

A. I think not.

Q. What is your business, how long have you been engaged in it?

A. I am in the banking business, and have been in the business going on seven years, in this city; I was in the same business in St. Louis, about three years; I am one of the firm of Lucas, Turner & Co.

Q. Did the duties of your position render you familiar with signatures and hand-writing?

A. Yes.

Q. Look at the documents marked Exhibit, Nos. 1, 2, 3, A. F., annexed to the deposition of I. N. Thorn, filed in office July 10th, 1854, also at the document marked Exhibit C, No. 1, annexed to the deposition of Abel Stearns, filed in office March 2d, 1854, and state whether, in your opinion, the signatures of Francisco Guerrero in these documents were made by the same person?

A. Admitting the signatures of the three first documents to be genuine, then document Exhibit C, No. 1 is not.

Question and answer objected to as incompetent.

Q. Look at Exhibit C, No. 1, on the third and fourth pages, and state your opinion in regard to the ink with which the body of the instrument, the signatures Juan N. Padilla, and the words of Testigas de Asistencia are written, and the signature of Francisco Guerrero and Gregorio Briones?

A. I think they are written by different ink; may be, exposure to the air caused it to fade somewhat, and may be, by the handling of the document. In opening that document, a man's hand would naturally deface it somewhat.

Q. In opening and handling the document C, No. 1, would, in your opinion, the words "Testigos de," on the bottom of the third page, be exposed to greater risk of defacement than the rest of the same page?

A. In my previous answer I had more reference to the signature of Francisco Guerrero; I do not think so; this document seems to have been torn here, and in mending it they have handled much more in that portion than they would at the end of the document.

Q. State your opinion, whether the ink with which the name of Gregorio Briones is written, is the same as that used in the body of the instrument, and the other signatures?

A. I should not think it was.

Cross-examination.

Question. When did you first see these papers, where, at whose instance, and for what purpose?

Answer. About five or six weeks ago, I think it was in the Surveyor General's office, Montgomery block, at the instance of James Dows; I do not know for what purpose; I suppose, to give my opinion; I did not learn what interest Mr. Dows had in the matter.

BENJ. R. NISBETT.

Sworn and subscribed to before me, May 9th, 1857.

J. EDGAR GRYMES, Special Commissioner.

Deposition of L. Lanszweert.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSEFA DE HARO ET AL.

San Francisco, May 9th, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee, appointed by the District Court of the United States for the Northern District of California, duly authorised to administer oaths, etc., etc., came L. Lanszweert, a witness produced on behalf of the United States, in Case No. 381, being an appeal from the Board of Commissioners, to ascertain and settle the private land claims in the State of California, in Case No. 101, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present: United States District Attorney, and Volney E. Howard for claimants.

Questions by the U. S. Attorney.

Question. What is your name, age and place of residence?

Answer. Louis Lanszweert, 29 years, I reside in San Francisco.

Q. Please state what is your profession, and how long have you been engaged in it, and what are its duties?

A. Diploma apothecary and practical chemist; I received my diploma in Brussels, in 1848; I was employed as legal chemist at home.

Q. Look at the document C, No. 1, annexed to the deposition of Abel Stearns; state your opinion with regard to the ink used in the body of the instrument, and the words "*Testigo de Asistencia,*" also used in the signature of Juan N. Padilla, and the signatures of Francisco Guerrero and Gregorio Briones.

Question objected to by claimant's attorney.

A. On a simple inspection, I believe three different kinds of inks

have been used in this document. If chemical decomposition, or analysis, could be allowed or made, the facts would corroborate my testimony. The words "Testigo de Asistencia," and the signature of Fo. Guerrero are different; as to ink in the signature of Juan Padilla, I don't believe that the atmospheric influence could have had more action on the words "Testigo de Asistencia" than on the signature, or written document, signed by Padilla; I do not believe that the moisture or sweating of the hands in handling that part of the document, of the words "Testigo de Asistencia," could give the difference that I perceive in the two inks used. The ink used in the Gregorio Briones differs entirely from the ink used by Juan N. Padilla and that of Guerrero; the texture of the paper appears to me where the words written "Testigo de Asistencia" and the signature of Guerrero, also the texture on which Gregorio Briones was written, and the signature of Juan Padilla appears to me even.

Q. Whether the ink used in the signature of Micheltorena on the second page of document C, No. 1, is the same as that of the body of the grant and that of Jimeno?

(Question objected to.)

A. It is my opinion that the signature of Manuel Jimeno is written with the same ink as the body of the document; that the signature of Micheltorena is entirely different ink.

Cross-examination.

Question. When did you first see these papers; where, at whose instance and for what purpose?

A. I believe I saw these papers about four weeks ago; I saw them in the Surveyor General's office, at the instance of a gentleman present, I do not know his name, (he pointed to Mr. Mason) for the purpose of giving my opinion.

Q. Did you tell Mr. Mason what you testified to?

A. I believe I did give him a simple opinion, telling him that it would require the necessity to make a more careful examination.

Q. Did Mr. Mason explain to you the reasons why he wished you to testify?

(Question objected to on the ground that he had not stated that Mr. Mason requested him to testify.)

A. He did not; he told me nothing about it; I went with him as a friend; I did not know that Mr. Mason was a settler.

Q. Did you take Mr. Mason for a mere amateur?

A. No.

(Question above objected to as irrelevant.)

DR. L. LANSZWEERT.

Subscribed and sworn to before me, May 9th, 1857.
J. EDGAR GRYMES, Special Commissioner.

Endorsed—Filed May 9th, 1857. JOHN A. MONROE, Clerk.
By W. H. Cheevers, Deputy.

Deposition of Luis Arenas.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES,
vs.
JOSEFA DE HARO.

San Francisco, May 12, 1857.

On this day, before John A. Monroe, a Commissioner of the United States for the Northern District of California, duly authorised to administer oaths, &c., &c., came Luis Arenas, a witness produced on behalf of the claimants in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 101, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Clinton Palmer, a sworn interpreter:

Present—Volney E. Howard, Esq., for claimant, and the U. S. District Attorney.

Questions by Claimant's Attorney.

Question. What is your name, age, and place of residence?

Answer. Luis Arenas, sixty-one, and reside in Santa Barbara county, California, and am a laborer.

Q. Do you know Vicente Prefecto Gomez?

A. I know him; I have known him 18 or 20 years, more or less.

Q. What is his general reputation for truth and veracity. State if you are acquainted with the same, and if yea, state what it is?

A. I don't know what his character for truth and veracity is.

Q. Do you know anything of your own knowledge concerning his truth and veracity?

(Question objected to by U. S. Attorney, as improper for the purpose of impeaching.)

A. All I know is, that Gomez once testified that I was present at certain place when I was not.

Q. From your knowledge of Gomez, would you believe him under oath?

(Question objected to by U. S. Attorney, as improper for the purpose of impeaching.)

A. I would not.

Q. What is the reputation of Gomez for truth and veracity among the old Californians, so far as you have heard it spoken of?

(Objected to for same reason as above.)

A. I heard them say at the hotel, that Gomez told a lie. This was at the hotel where I stopped.

Cross-examined.

Question. How long since you made up your mind you would not believe him under oath?

Answer. I don't know how long; I believe only a few days.

Q. Did you ever hear the old Californians say anything against him until within the last few days?

A. All I heard against him was recently.

Q. Are you the Luis Arenas to whom a grant or sale was alleged to have been made, to the tract of land called the Orchard of Santa Clara, jointly with Benito Diaz and Juan Castillero?

(Question objected to as irrelevant and not responsive to the examination in chief.)

A. I am. LUIS ARENAS.

Sworn and subscribed before me, May 12th, 1857.

JNO. A. MONROE, Commissioner.

Endorsed—Filed May 14th, 1857. JOHN A. MONROE, Clerk.
By W. H. Cheevers, Deputy.

Deposition of J. L. Luco.

UNITED STATES DISTRICT COURT, }
Northern District of California. }

THE UNITED STATES }
vs. }
JOSEFA DE HARO. }

San Francisco, May 13th, 1857.

On this day, before John A. Monroe, a Commissioner of the United States for the Northern District of California, duly authorised to administer oaths, &c., &c., came José Leandro Luco, a witness produced on behalf of the claimants in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 101, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Wm. B. Reynolds, a sworn interpreter:

Present—Volney E. Howard, Esq., for claimants, and the U. S. District Attorney.

Question by Claimants' Attorney.

Question. What is your name, age, and place of residence?

Answer. José Leandro Luco; 34 years of age; reside in Solano County, California.

Q. Are you acquainted with Vicente Gomez, if so, where did you know him, and how long?

A. I know him; I knew him in San Francisco; have known him for the last six or seven years.

Q. Are you acquainted with his general reputation for truth and veracity in the community where he has resided, if yea, state what it is?

A. I am; with respect to matters relating to land in California it is bad.

Q. From your knowledge of that reputation, would you believe him on oath?

A. Touching land in California, I would not; I mean in regard to his testimony concerning lands in California, I would not believe him under oath.

Cross-examined.

Question. Would you believe Vicente Prefecto Gomez under oath when he swore to his own handwriting?

A. It would be according to the subject to which it related; if to lands, I would not.

Q. In a case in which he had no interest would you believe him when he swore to his own handwriting?

A. If it related to lands I would not.

Q. When did you form this opinion of the character of Gomez?

A. Two or three years ago I formed this opinion, for the reason that I saw General Castro kick Gomez for having told lies in regard to a land claim which was being litigated in Court at that time; and General Castro proved the same to be a lie, to me.

Q. Did you ever have any personal transactions or business with Gomez, if yea, what were they?

A. None.

Q. At what time, and what place, and on what subject was Gomez kicked by General Castro?

A. It was about two or three years ago, on the Plaza in front of the City Hall, because he had told a lie concerning a land claim; do not recollect in what case.

Q. Was not all your information on this subject derived from Castro?

A. It was; and he proved it to me by a person who was present?

Q. Who was present at this time, besides yourself?

in his testimony

A. Señor Chavis and Dolores Sepulveda.

Q. By whom did Castro prove the lie to you?

A. Castro mentioned acts which had taken place of which Chavis and Sepulveda were cognizant,and which they affirmed.

Q. How is it you make a difference between believing him in matters concerning land and other subjects?

A. I have never had any transactions with him; neither been cognizant of any on other subjects, and in regard to lands from what I have been told and from what I have seen of him in those matters I would not believe him.

Q. Mention the names of all the parties who have ever told you about Gomez in land matters?

A. It is impossible for me to recollect the names of all the parties that I have heard speak of him in the last seven years, but all the South Americans, Spaniards, and Californians who know him, I have heard speak of him in that way: Argos, Villamil, Miranda, Vallejos, Gonzales, from four countries—one from California, Rafael Gonzales; one from Peru, José Maria; one from Chile, José Antonio; and the other from Mexico; don't recollect the first name of the last; the Sepulvedas, the Briones, Gregorio and Pablo Briones.

Q. Did all the parties you have mentioned speak badly of Gomez in the last seven years?

A. In friendly and private conversations with all those parties they have given him a bad reputation in regard to his testimony in land cases.

Direct resumed.

Q. During the last two or three years that you have known Gomez in San Francisco, has he had any visible means of livelihood, except that of giving testimony, either on the one side or the other, in land claims.

[Question objected to as leading.]

A. I have not known him to have any other occupation.

Cross-examination resumed.

Q. Do you know that in giving his evidence in the last two or three years, he has testified, in the majority of cases if not in all, in favor of Mexican claims?

A. I do not know whether he has testified in favor or against them; I do not know anything about his private life or business.

JOSE LEANDRO LUCO.

Sworn to before me, May 13th, 1857.

JNO. A. MONROE, U. S. Commissioner.

Endorsed—Filed May 14th, 1857.

JOHN A. MONROE, Clerk.
By W. H. Cheevers, Deputy.

Deposition of Antonio Larrain.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES,
vs.
JOSEFA DE HARO.

San Francisco, May 13, 1857.

On this day, before John A. Monroe, a Commissioner of the United States for the Northern District of California, duly authorised to administer oaths, &c., &c., came Antonio Larrain, a witness produced on behalf of the claimants in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 101 on the docket of the said Board of Commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Wm. B. Reynolds, a sworn interpreter:

Present—Volney E. Howard, for claimant, and the U. S. District Attorney.

Question by Claimant's Attorney.

Q. What is your name, age, and place of residence?

A. Antonio Larrain, 30 years of age, and reside in San Francisco, Cal.

Q. Are you acquainted with Vicente Gomez, if yea, how long have you known him, and where?

A. I am; I have known him three or four years, in San Francisco.

Q. Are you acquainted with his general reputation for truth and veracity, if yea, what is it?

A. It is bad.

Q. From his reputation for truth and veracity, would you believe him under oath?

A. In land claims I would not.

Q. What has been the occupation of Gomez since you have known him?

A. Looking around for men that would pay him to give testimony in land cases.

Cross-examined.

Question. How long have you been in this country (California), and what has been your occupation here, and of what country are you a native?

Answer. I came to California in 1849; my occupation is that of a merchant; I am a native of Chile; in 1849 I bought lands, after that I had a warehouse on Clay street wharf, for three years; now I have some interest in lands in Napa and Marin counties.

Q. Have you ever had any transactions with Gomez of any kind, if yea, state them?

A. No.

Q. What means have you then of knowing his business and occupation as above stated?

A. For the last 18 months I have lived out of San Francisco, and whenever I came in town I put up at the same hotel with Gomez, and he told me that that was his occupation, to be a witness and look for witnesses.

Q. Who were his companions and particular friends?

A. I believe he had none.

Q. Can you state any facts from which you formed your opinion as to his reputation?

A. What he has told me himself, when I have seen him, looking for witnesses for Limantour, and what General M. G. Vallejo, Captain Frisbie and others have told me.

Q. You have therefore formed your opinion of his reputation from hearsay, except as to what he told you himself?

A. I have.

Q. Do you know anything of the case of Rosaria Silva *vs.* Rafael Garcia, tried in 1856, before Judge Chamberlain, in this city?

A. I do.

Q. Do you know Rosaria Silva?

A. I do.

Q. Did you live with her at the time of the suit spoken of?

(Objected to, as a matter entirely foreign to this case.)

A. I did.

Q. Did you testify in the case just spoken of, and did José Leandro Luco, who has just testified in this case, give his evidence also in the case before Judge Chamberlain?

A. We both testified in the case referred to.

Q. Do you know Señor Fiero, formerly the Chilian Consul in San Francisco?

A. I know one Mr. Fiero, but he never was the Chilian Consul at San Francisco.

Q. Do you know Alcayaga, and was he not formerly the Chilian Consul at this port?

A. I do, but he was never Chilian Consul.

Q. Did Señor Fiero, Alcayaga and Antonio Berreyesa appear as witnesses in the case before Judge Chamberlain, spoken of, and did they not testify they would not believe you under oath?

(Objected to.)

A. The record of the case is in Marin county, and is public.

Q. Do you refuse to answer directly the question next above?

A. I do, for the record is public, and it is open to the inspection of all.

Q. Did not Señor Fiero or Alcayaga testify on that occasion that they would not believe you in the hour of death?

(Objected to.)

A. I repeat, the cause is public and open to the inspection of all.

Q. Did not you and José Leandro Luco testify to the same effect in the case of Silva *vs.* Garcia?

(Objected to.)

A. Our testimony was not the same; I repeat, the record of the case is public. A. LARRAIN.

Sworn to before me, May 13, 1857.

JOHN A. MONROE, U. S. Commissioner.

Deposition of T. C. Banks.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES,
vs.
JOSEFA DE HARO ET AL.

San Francisco, May 14th, 1857.

On this day, before J. Edgar Grymes, a special Commissoner and Referee appointed by the District Court of the United States for the Northern District of California, duly authorised to administer oaths, etc., came Thomas C. Banks, a witness produced on behalf of the United States in Case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in Case No. 101 on the docket of said Board of Commissioners, and was duly sworn and testified as follows:

Present, U. S. District Attorney and V. E. Howard, for claimants.

Question by U. S. District Attorney.

Q. What is your name, age, and place of residence?

A. My name is Thomas C. Banks, 35 years of age, and I reside in San Francisco; I am engaged in a banking house; I have been in the business six or seven years; at present I am paying teller in Wells, Fargo & Co.'s bank.

Q. Have the duties of your office rendered you familiar with signatures and handwriting?

A. Yes sir. My business requires my comparing, frequently, handwriting and signatures.

Q. Admitting the signatures of Francisco Guerrero, in documents marked Exhibits Nos. 1, 2 and 3, A. F., P. L., in this case to be genuine, state whether, in your opinion, they were made by the same person who signed the name of Francisco Guerrero, as appears on the 4th page of the document marked C, No. 1.

[Objected to by claimants' counsel as incompetent.]

A. The signature of document C, No. 1, is made, I should think, by a different person, scarcely possible made by the same person.

Q. Compare the signatures of Manuel Jimeno, on the second page of document H. I. T., No. 1, annexed to the deposition of W. A. Richardson, and on the 2d page of document C, No. 1, and state whether they are made by the same person, in your opinion?

[Objected to by claimants' counsel as incompetent to prove signatures.]

A. I do not believe that they were written by the same person.

Q. Look at the signatures of Padilla, Francisco Guerrero and Gregorio Briones, on the document C, No. 1, and state whether they were made with the same ink, in your opinion?

[Objected to by claimants' counsel as incompetent to prove signatures.]

A. I think they are different kinds of ink.

Cross-examined.

I saw these papers some three or four months [ago] in the Surveyor-General's office, by request of Mr. Bradshaw, I suppose, to give my testimony in this case.

THO. CRANE BANKS.

Sworn to and subscribed before me May 14, 1857.

J. EDGAR GRYMES, Special Commissioner.

Deposition of H. P. Hawkins.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSEFA DE HARO ET AL.

San Francisco, May 14th, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee appointed by the District Court of the United States for the Northern District of California, duly authorised to admin-

ister oaths, etc., etc., came H. P. Hawkins, a witness produced on behalf of the United States, in Case No. 381, being an appeal from the Board of Commissioners, to ascertain and settle the private land claims in the State of California, in Case No. 101, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present—U. S. District Attorney V. E. Howard, for claimants.

Questions by United States District Attorney.

Question. What is your name, age, and place of residence?

Answer. My name is H. P. Hawkins, 33 years, and I reside in San Francisco. I have been for the last two years in the banking house of Tallant & Wilde, as receiving and paying Teller. I had been two years previous to this in the Commission House of Hussey, Bond & Hale. Previous to that I was employed in New York, in Erie Railroad Company's office, for three years. My business there was to receive money on freight and passengers. The duties of my office rendered me familiar with handwriting and signatures. There was a large lot of counterfeit money afloat, and it was necessary to be acquainted with the signatures of bank notes.

Q. Compare the signatures of Francisco Guerrero, in documents marked Exhibits No. 1, 2, and 3, A. F. P. L., with the signature of Francisco Guerrero, in document C, No. 1—admitting the first to be genuine, state your opinion as to the genuineness of the last, and say whether you would pay a check upon the last if presented to you?

Question objected to by claimants' counsel, as both incompetent in substance and form.

A. I do not think that the signatures were made by the same person. I would hesitate to pay a check, if presented to me, signed by the signature of the person in document C, No. 1.

Q. Compare the signatures of Manuel Jimeno, on the second page of document H. I. T., No. 1, annexed to the deposition of W. A. Richardson, and on the second page of document C, No. 1, and state whether they are made by the same person in your opinion?

Objected to by counsel for claimants, as incompetent to prove signatures.

A. I do not believe they were written by the same person.

Q. Did the duties of the offices which you have held at any time require you, or call upon you, to compare the inks with which signatures and handwritings were made?

A. I have been called upon to compare inks in signatures.

Q. Look at the signatures of Padilla, Francisco, Guerrero and Gregorio Briones, on the document C, No. 1, and state whether they were made with the same ink in your opinion?

Objected to by claimants' counsel, as incompetent to prove signatures.

A. I think they are different kinds of inks.

Cross-examination waived.

H. B. HAWKINS.

Sworn to and subscribed before me May 14th, 1857.

J. EDGAR GRYMES, Special Commissioner.

(Endorsed)—Filed May 15th, 1857. JOHN A. MONROE, Clerk.
By W. H. Cheevers, Deputy.

Deposition of Miguel Noé.

UNITED STATES DISTRICT COURT,
Northern District of California.

UNITED STATES
vs.
JOSEFA DE HARO ET AL.

San Francisco, May 18th, 1857.

On this day, before me, John A. Monroe, a Commissioner of the United States for the Northern District of California, duly authorised to administer oaths, etc., etc., came Miguel Noé, a witness produced on behalf of the United States, in Case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in Case No. 101 on the docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present—U. S. District Attorney, and Volney E. Howard, for claimants.

Questions by United States District Attorney.

Question 1. What is your name, age, and place of residence?

Answer. Miguel Noé, about 25 or 26 years of age, and reside at the Mission Dolores?

Q. 2. How long have you resided at the Mission Dolores?

A. Since 1842 or 1843.

Q. 3. Do you know the Potrero Nuevo; if yea, how long have you known it?

A. I do know the Potrero Nuevo, and have known it since the year 1843.

Q. 4. State whether any part of the Potrero Nuevo was ever cultivated by the de Haro's, or whether they ever had any house upon it?

A. No part of it was cultivated; neither did they have any house upon it.

Q. 5. State whose cattle, if any, pastured upon the Potrero from the time you first knew it down to the year 1850?

Objected to by claimants' counsel.

A. Everybody's cattle; I had my cattle and horses there; it was common pasture ground for the inhabitants of the Mission.

Cross-examination waived by counsel for claimants.

MIGUEL NOE.

Sworn and subscribed before me, this 18th of May, 1857.

JNO. A. MONROE, U. S. Commissioner.

(Endorsed)—Filed May 18th, 1857. JOHN A. MONROE, Clerk. By W. H. Cheevers, Deputy.

Deposition of E. F. Northam.

UNITED STATES DISTRICT COURT, Northern District of California.

THE UNITED STATES, *vs.* JOSEFA DE HARO ET ALS.

San Francisco, May 22d, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee of the United States for the Northern District of California, duly authorised to administer oaths, etc., etc., came Edward F. Northam, a witness produced on behalf of the United States, in Case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in Case No. 101, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present—U. S. District Attorney; O. C. Pratt for claimants.

Questions by U. S. District Attorney.

Question. What is your name, age, and place of residence?

Answer. My name is E. F. Northam, 41 years, and I reside in San Francisco.

Q. Have you in your possession any stamped paper signed in blank by Micheltorena; if yea, will you produce the same, and state when and where you obtained it?

(Question objected to as irrelevant.)

A. I have stamped paper in blank purporting to be signed by Micheltorena; I will show them, and do now, it being understood that they are to be returned to me, as they are private property.

(Attorney for claimants objects to the production of any papers or reference to the same which are not to be made a part of the deposition or retained as such.)

I obtained them over a year since from A. Jouan. (Two papers are produced by the witness, marked (1) and (2) D. O. S.)

Q. Will you produce these papers to the Court at the time of the trial, if at that time they are in your possession or control?

A. I am unwilling to agree, but expect to do so.

Cross-examination.

Question 1. Do you know the handwriting of Micheltorena?

A. I never saw him write, and do not positively know it.

Q. 2. Have you any other knowledge of his handwriting, except by comparison of the signature on these papers, with other papers which purport to have been signed by the same person?

A. I do not know his handwriting.

Q. 3. Where is A. Jouan, if you know?

A. He is in the Eastern States.

Q. 4. What other knowledge have you, if any, where these papers came from or were obtained, except the statements of the said Jouan?

A. None. E. F. NORTHAM.

Sworn to and subscribed before me, this 22d day of May, 1857.

J. EDGAR GRYMES, Special Comm'r.

Deposition of H. F. Teschemacher.

UNITED STATES DISTRICT COURT, Northern District of California.

THE UNITED STATES, *vs.* JOSEFA DE HARA, ET ALS.

San Francisco, May 22d, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee of the United States for the Northern District of California, duly authorised to administer oaths, &c.. &c., came H. F. Teschemacher, a witness produced on behalf of the United States, in Case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in Case No. 101, on the docket of the said Board of Commissioners, and was duly sworn, and testified as follows:

Present: U. S. District Attorney; O. C. Pratt, for claimants.

Questions by United States District Attorney.

Q. What is your name, age, and place of residence?

A. My name is H. F. Teschemacher; 34 years old, and I reside in San Francisco.

Q. Do you know the handwriting of Manuel Micheltorena, and if so, what are your means of knowledge?

A. I do know his handwriting; my means of knowledge is having seen documents signed by him which I believe to be genuine, and I have seen him write, perhaps two or three times.

Q. Look at the blank Mexican papers this day produced by E. F. Northam, and referred to in his deposition taken in this case this day, marked No. 1 and No. 2, D. O. S., and please state whether the signature of Micheltorena on No. 1, and the signature of Manuel Micheltorena on No. 2 are his genuine signatures or not?

(Counsel for claimants objects to witness' referring to any paper or papers for the purpose of determining the genuineness of said signatures, unless the same be made an Exhibit and part of this deposition.)

A. The one signed Micheltorena looks like the way I have seen it signed. I should say that Manuel Micheltorena was his signature on document No. 1.

Q. Look at the document before referred to, and state what you find on each of said documents?

(Counsel for claimants objects to stating the contents of said papers or anything appearing to be upon them, unless the same are made a part of this deposition, to be referred to and used in connection with witness's answer to the question.)

A. I see some printed writing at the top of the 1st page of document No. 1, also the Custom House seal of Monterey, and also what I should think was the rubric of Manuel Micheltorena, and the one of Pablo de la Guerra, all near the top of the page; all the balance is blank. On the 2d page I see nothing but a pencil mark; on the 3d page I see what I should think was the signature of Manuel Micheltorena—this is about half way on said page. On document No. 2, I see some printed writing on the top of the page, Custom House seal of Monterey, and what I should think were the rubrics of Manuel Micheltorena and Pablo de la Guerra, and also some writing on the margin signed by what I should say was Micheltorena's signature; the balance of the page blank, the other three pages blank.

Q. State what the printed matter is on the top of each of these two pages?

A. No. 1 is eight dollars sealed paper for the years 1844 and 1845; No. 2 is called fourth seal, 2 reals, also for the years 1844 and 1845.

Q. What is the mariginal writing on the first page of No. 2?

A. I cannot make out one or two words; the general sense of it is, "If the land mentioned by somebody (I cannot make out

whom) is vacant, I think it means, to let the title issue;" but I am not positive as to the last.

Q. In what language are the documents printed and written, and do you speak and read that language?

A. It is in the Spanish language; I both read and speak it.

Cross-examination.

Q. If you recollect on any occasion when you saw Micheltorena write his signature to any document, and particularly observed the maaner in which he wrote it, please state the time when, place where, and the particular document which you saw him sign?

A. The first time I ever saw him sign any particular document was in 1843, at Monterey, it being an order to deliver some goods.

Q. Who, if anybody, was present beside yourself?

A. I cannot say certainly; it was in Micheltorena's office, in Monterey.

Q. In what way was his signature signed, Manuel Micheltorena, or simply Micheltorena?

A. I do not think I can recollect positively, but I know of my own knowledge that he was in the habit of abbreviating his signature when the document was not important.

Q. Can you state that your personal knowledge of the hand-writing, and particularly the signature, of Micheltorena is such as to enable you to swear with anything like certainty to the genuineness of his hand-writing on the papers here shown to you by the counsel of the United States?

A. No, sir; his signature might be imitated so that I could not detect the genuine from the false; I do not know his hand-writing so well as to be positive as to the genuineness of these signatures; I think they are his to the best of my knowledge and belief.

Q. You speak of the rubrics of Micheltorena and Pablo de la Guerra on the first page of paper, marked No. 2, now state if you mean to be understood that you know of your own personal knowledge the genuine rubrics of these persons, and that those referred to are genuine?

A. I know both of the rubrics of those two persons, and to the best of my knowledge and belief, I believe them to be genuine.

Q. How often have you seen Micheltorena sign his rubric?

A. I do not recollect now but once having seen him sign his rubric.

Q. How often, if ever, have you seen Pablo de la Guerra sign his rubric?

A. A great many times; more than I can recollect.

Q. Look upon the rubric of Micheltorena on the paper marked No. 2, and also the rubric placed under the signature of Manuel

Micheltorena signed on the third page of paper No. 1, and state if, on comparison, they are not quite dissimilar?

A. Yes sir; there is a dissimilarity, but I have seen his rubric which although I did not see him write, I have known to my own knowledge to be genuine, made differently at different times.

Q. Look upon the Custom House seal upon both papers, and state whether they do not appear to have been stamped; are said papers more recently than the years 1844 or 1845?

A. I can't say; I should think the freshness of the seal would depend on the way in which the documents have been preserved.

Q. Look upon document No. 2, at the rubric of Micheltorena at the top of the first page, and the writing on the same page over the signature of Micheltorena, and state whether they do not appear to have been written with different ink?

A. I should say it was, as far as I am a judge in such matters; the ink looks paler at the top where the rubric is signed, than the writing on same page below; I am not an expert in the comparison of inks; I was brought up in a commercial counting house, and have had occasion to use and see different kinds of inks, very much in my lifetime. H. F. TESCHEMACHER.

Sworn to and subscribed before me this 22d day of May, 1857.
J. EDGAR GRYMES, Special Commissioner.

Deposition of T. O. Larkin.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSEFA DE HARO, ET AL.

San Francisco, May 22, 1857.

On this day, before me, J. Edgar Grymes, a Special Commissioner and Referee of the United States for the Northern District of California, duly authorised to administer oaths, &c., &c., came Thomas O. Larkin, a witness produced on behalf of the United States in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 101, on the docket of the said Board of Commissioners, and was duly sworn, and testified as follows:

Present—U. S. District Attorney; O. C. Pratt for claimants.

Questions by U. S. District Attorney.

Question. What is your name, age, and place of residence?

Answer. My name is Thos. O. Larkin, I am 54 years old, and I roside in San Francisco.

Q. Do you know the handwriting of Manuel Micheltorena, and if so, what are the means of your knowledge?

A. I was acquainted with his handwriting, and have seen him write a good many times; I have seen him sign his name frequently.

Q. Look at the blank Mexican papers this day produced by E. F. Northam, and referred to in his deposition taken in this case this day, marked (No. 1) and (No. 2,) D. O. S., and please state whether the signature of Micheltorena on No. 1, and the signature of Manuel Micheltorena on No. 2, are his genuine signatures or not?

(Counsel for claimants objects to witness referring to any paper or papers for the purpose of determining the genuineness of said signature unless the same be made an Exhibit and part of this deposition.)

A. I think they are both in the handwriting of Micheltorena.

Q. Have you ever seen any other Mexican paper signed in blank by Micheltorena, if so, when and where?

(Objected to as irrelevant.)

A. I saw four blanks in 1855 or 1856; I saw them in the possession of John Parrott and Mr. Northam.

Cross-examination.

Question 1. State whether the four blank papers you refer to were not those brought to this city by August Jouan, the two here being a part of them?

A. I do not know who brought them here; I think these are two of the four.

Q. Did you not hear A. Jouan say that he brought them here?

A. I do not remember of his saying so.

Q. Did you not hear either Mr. Parrott or Mr. Northam say they were brought here by Jouan?

(Objected to as seeking for hearsay evidence.)

A. Mr. Parrott told me they were left in his possession by Jouan.

THOMAS O. LARKIN.

Sworn to and subscribed before me this 22d day of May, 1857.

J. EDGAR GRYMES, Special Commissioner.

Deposition of José Berreyesa.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES,
vs.
JOSEFA DE HARO ET AL.

San Francisco, May 22d, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee of the United States for the Northern District of California, duly authorised to administer oaths, &c., &c., &c., came José Berreyesa, a witness produced on behalf of the United States in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 101, on the docket of the said Board of Commissioners, and was duly sworn, and testified as follows:

Present—U. S. District Attorney; O. C. Pratt, for claimants.

Questioms by U. S. District Attorney.

Question. What is your name, age, and place of residence?

Answer. My name is José Berreyesa, 39 years old, and I reside in Martinez, Contra Costa County.

Q. Are you acquainted with Antonio Larrain, if so, how long have you known him, and where?

A. It is about two —— since I became acquainted with him, years here in San Francisco.

Q. Are you acquainted with his general reputation for truth and veracity, and what it is?

A. Among his countrymen his reputation is bad.

Q. From your acquaintance with his reputation, would you believe him on oath?

A. In some cases I would, and in some cases I would not.

Q. State, if you know, what is the occupation of the said Larrain, and his means of living?

(Objected to as irrelevant.)

A. The only occupation I know of is, that he follows the Luco brothers.

Q. Who are the Lucos?

A. They are two Chilians.

Q. State whether they are prosecuting any land case in the U. S. District Court, and what it is?

(Objected to as irrelevant.)

A. They are prosecuting the "Ulpines case."

Cross-examination.

Question. Do you know Vicente Prefecto Gomez, if so, how long and where?

(Question objected to as not responsive to examination in chief.)

A. I have known him for 11 years, here and in Monterey.

Q. Do you know his present general character among his acquaintances for truth and veracity, if you do, state whether it is good or bad?

(Objected to as irrelevant and irresponsive.)

A. I know him, and according to my way of thinking, he is capable of saying the truth or telling a lie; I cannot say whether it is good or bad, but what I hear, he is capable of doing anything good or bad.

Q. From your knowledge of his general character among his acquaintances, for truth and veracity, would you believe him under oath?

A. I have already answered this question above; Gomez is like a weak-minded child; he is able to do a good action or a bad one.

JOSE BERREYESA.

Sworn to and subscribed before me this 22d day of May, A. D. 1857. J. EDGAR GRYMES, Special Commissioner.

(Endorsed)—Filed May 22d, 1857. JOHN A. MONROE, Clerk. By W. H. Cheevers, Deputy.

Deposition of C. E. Hinckley.

UNITED STATES DISTRICT COURT, Northern District of California.

San Francisco, April 18, 1857.

On this day, before Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorised to administer oaths, &c., &c., came Charles E. Hinckley, a witness produced on behalf of the United States, in case No. 381, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 101, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present—V. E. Howard, for claimants; and U. S. District Attorney, by H. S. Brown.

Questions by U. S. District Attorney.

Question 1. Your name, age, and place of residence?

Answer. Charles E. Hinckley; 27; San Francisco; I am a druggist; I am acquainted with chemistry.

Q. 2. Look at the Exhibit C, No. 1, annexed to the deposition of Abel Stearns, as taken before Commissioner Thompson Campbell, and filed March 2, 1854, in the office of the Secretary of the Land Commission, and state whether the names Juan Nepo. Padilla, Francisco Guerrero and Gregorio Briones, subscribed on the last sheet of said document, were written with the same ink?

A. I believe that they were not; they have a different appearance, on examination; I have examined the signatures with a microscope, and I see three different tinges of ink.

(Question and answer objected to.)

Q. 3. Look at the writing on the third page of said document, above the signature of Juan Nepo. Padilla, and at the signature of Juan Nepo. Padilla, and state whether the ink is the same in both the writing and signature referred to; and in the same connection state whether the ink is darker or lighter?

(Question objected to.)

A. I think those are written in the same ink; it has the appearance of ink that is faded; where it is put on heavy it is dark, and generally it is dark ink.

Q. 4. Look at the words "*testigo de*," on 3d page, and the words "*assistencia*" and "*Franco. Guerrero*," on 4th page, and state whether those words are written in the same or other ink than the body of the instrument, and the name "Juan Nepo. Padilla?"

(Question objected to.)

A. I don't think they conld have been written in the same ink.

Q. 5. Look at the signature of Gregorio Briones, on 4th page, and state if that is in the same ink with either of the others?

(Question objected to.)

A. I think it was not.

Cross-examination.

Question 1. When did you first examine this document, and at whose instance?

Answer. I don't remember the exact day; it was in the Surveyor General's office; but as near as I can remember, it was twelve days ago; Mr. Mason requested me to examine it.

Q. 2. What interest has Mr. Mason in this matter?

A. I don't know, I am sure; I don't know that he had any interest in the matter; he did not tell me so.

Q. 3. What reason did Mr. Mason give for requesting you to go and examine it?

A. He did not tell me he had any interest in the matter.

Q. 4. What sort of glasses did you take with you to examine the paper?

A. I took none with me; I examined it with one that was handed to me in the office.

Q. 5. Who handed it to you?

A. Mr. Mason.

Q. 6. Is that glass with which you examined that paper the same as the one now shown you, in the presence of the Commissioner, by Mr. Mason?

A. I cannot say that it is.

Q. 7. Have you any doubt that it is the same glass?

A. It was a glass similar to that with which I examined it.

Q. 8. Did you hear Mr. Mason say, just now, in the presence of the Commissioner, that it was the same used by you in the Surveyor General's office?

A. I did not.

Q. 9. Did you hear Mr. Brown, counsel for the settlers in this case, say, when Mr. Mason handed the glass to the Commissioner, or to yourself, that he admitted that it was the same?

A. I did.

Direct examination resumed.

Question 1. Are you in business in San Francisco, if so, state what it is and what firm you are a member of, if any?

A. I am in the druggist business; I am one of the firm of Wm. B. Little & Co., in San Francisco. CHAS. E. HINCKLEY.

The reading of this deposition objected to by claimant's attorney, unless the original document referred in this deposition be annexed to this deposition, or produced at the hearing.

Subscribed and sworn to before me this April 17, 1857.

CUTLER MCALLISTER, U. S. Commissioner.

Endorsed—Filed December 5th, 1857. JOHN A. MONROE, Clerk.
By J. Edgar Grymes, Deputy.

Deposition of H. Cambuston.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSEFA DE HARO ET AL.

San Francisco, July 16th, 1857.

On this day, before J. Edgar Grymes, a Special Commissioner and Referee of the United States for the Northern District of California, duly authorised to administer oaths, &c., &c., came Henry Cambuston, a witness produced on behalf the claimants in case No. 381, being an appeal from the Board of Commissioners to as-

certain and settle the private land claims in the State of California, in case No. 101, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Fred. A. Sawyer, a sworn interpreter;

Present—V. E. Howard, Esq., for claimants, and U. S. District Attorney and H. S. Brown for the U. S.

Questions by V. E. Howard, for Claimants.

Question. What is your name, age, and place of residence?

Answer. Henry Cambuston, 39 years old, and I reside in Monterey County.

Q. 2. How long have you resided in California, and what has been your occupation?

A. I have been here since 1841; my object in coming here was to make a contract with Gov. Alvarado and Castro to establish a school, and I came here and fulfilled the post of schoolmaster for four years, and was paid by the Government.

Q. 3. Were you acquainted with Tomas Soberanes during his lifetime?

A. He was one of my scholars during the whole time that I had a school in Monterey.

Q. 4. Were you acquainted with his handwriting?

A. Yes; for it was me who taught him how to write.

Q. 5. Look at the paper now shown you, marked Exhibit C, No. 1, and annexed to the deposition of Abel Stearns, and say in whose handwriting the body of the exhibit is in?

A. The body of it is in the handwriting of Tomas Soberanes; I did not see him write it, but in my conscience I believe he did.

Q. 6. Are you acquainted with Vicente Prefecto Gomez?

A. I am; I employed him as sub-teacher for nearly a year, at a salary of $500 per annum, to teach the young scholars; I am acquainted with his handwriting.

Q. 7. Look at a paper marked Exhibit A, (O. H.) attached to the deposition of Gomez in this case, and say in whose handwriting it is?

A. It resembles Gomez handwriting, but it is badly written for Gomez?

Q. 8. Please compare Exhibit C, No. 1, with Exhibit A, (O. H.) referred to above and state whether in your opinion they are both written by the same person?

A. They are not written by the same person; the handwriting in Exhibit A (O. H.) is written in a rounder, better hand than the other, and in an inferior handwriting; I find a great difference in the two writings; the last one exhibited to me is more of a school boy handwriting, and the difference in the whole body of the

writings, and I am willing to swear in my judgment that they are different handwritings; it seems as if the person who wrote the last exhibit wished to imitate the other; there is a difference in the formation of the characters in the same paper; there is a difference in the handwriting of the capital letters in the two documents.

Q. 9. Was V. P. Gomez at your school when Tomas Soberanes was a scholar there?

A. Yes; he was there during the whole time that Gomez was there.

Q. 10. How did the handwriting of Gomez and Soberanes compare?

A. There was some resemblance; Soberanes was the best writer of the two; Gomez's writing was round, whilst Soberanes' was more angular.

Q. Did Gomez teach writing?

A. He gave lessons to the young scholars, made pens and set copies.

Q. 12. Are you acquainted with the handwritings of Manuel Micheltorena and Manuel Jimeno?

A. I have seen them both write; I know their signatures; it is my opinion that their signature attached to Exhibit C, No. 1, is genuine.

Q. 13. Are you acquainted with the character of V. P. Gomez for truth and veracity in the community where he has resided?

A. He had a good reputation as far as I know; I never heard anything against him.

Cross-examined.

Question 14. Has it not been a number of years since you saw Soberanes write?

A. Not since 1846; my school closed three months before the Americans came here.

Q. 15. Look at Exhibit A annexed to your deposition, and state in whose handwriting that letter is?

A. It is in Tomas Soberanes' handwriting and directed to my wife.

Q. 16. Look at the letter "p" in Exhibit A and Exhibit C, No. 1, and state whether there is not a marked difference?

A. There is a difference; there are different ways of making "p."

Q. 17. Is there not a marked difference in the handwriting of the two exhibits referred to in the last above question?

A. There is a difference, but not a marked difference; the writing of Exhibit A. is better than the other; that might be influenced by the paper. The "p"s in Exhibit C. are not like the "p"s in Exhibit A, attached to my deposition, yet they are like Soberanes'

"p"s, and I have seen writing of Soberanes containing "p"s like those in Exhibit C. When Soberanes wrote the Exhibit C, he was learning how to write, and when he wrote Exhibit A, he knew already how to write; one being written in 1844, and the other in 1847. The "gg"s are not the same, but still that does not say that the writing is different. There is a difference in "r"s, but I still believe it is the same handwriting.

Direct resumed.

Q. 18. Have you any doubt that Exhibit No. C, and the letter now shown you were written by the same person?

A. I believe, conscientiously, that it is the same handwriting; one was written whilst he was at school, and the other when his handwriting was formed; one is wrote on a piece of paper which is rather coarse, and that might make a difference, but not in the form of the letters, but in the ease of writing.

H. CAMBUSTON.

Sworn to and subscribed before me, July 16th, 1857.

J. EDGAR GRYMES, Special Commissioner.

Exhibit A. annexed to deposition of Henry Cambuston.

Quertaro, D'bre 20 de 1847.

Sra. Da. Gabrielita Soberanes.

Querida prima: Hace cosa de tres meses que pasé por Mazatlán. De entre otras cartas iba otra diríjida á tí, noticiàndoles, como ahora, que nos hallabamos buenos, y que continuaba mi marcha hasta la capital de Méjico, como lo hé verificado, acompañandome Guadalupe y José María.

Así es que conocemos yá á todos los principales generales y poblaciones de nuestra República, y por lo mismo, ahora que somos testigos oculares de todo, nos regresaremos à Sonora en donde hemos pedido al Gobierno ir á continúar nuestros servicios, por tener allí muchas relaciones con buenas familias y mas cerca para irnos luego que concluya esta infáme guerra.

El Sor. Simanbon les informaría del estado de nosotros, hombre que nos ha favorecido y nos tuvo mucha consideracion, y por lo mismo ómito decirles la confianza que de él deben poner.

No tengan cuidado por José María, pues se conduce por el camino de honor.

Siempre que tenga oportunidad te escribiré. Salúdame á nombre de los tres á mi tio Feliciano, á tú nana, Cármelita, Sor. Cambuston,

á Pànfilo y á todos los demás que se acuerdan de nosotros. Y yo debo quedar como siempre tú confidente primo que te aprecia.

TOMAS SOBERANES.

Dile á José Antonio qne si todavia vá á resultar al Cármelo, que mande á su afectisímo, y que me salude á quien viva detrás de la casa de Sarafin, que no sea tunante.

A Da. Gabrielita Soberanes, Monterey, Alta California.

Filed December 12th, 1857.

JOHN A. MONROE, Clerk.
By J. Edgar Grymes, Deputy.

Extracts from Jimeno's Index and Toma de Razon.

[Extract from Index.]

Potrero de San Francisco, concedido á Don Francisco y Ramon de Haro. 360.

[Extract from Toma de Razon.]

Don Francisco y Ramon Haro en 1.° de Mayo.

Se les dió título del terreno nombrado el Potrero en extencion de medio sitio de ganado mayor.

OFFICE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the two preceeding, and hereunto annexed pages, of tracing paper, numbered from one to two, inclusive, exhibit a true, full, and correct copy of certain original writings now on file among the archives aforesaid in my office, page 1 being a portion of what is known as the "Jimeno Index," and page 2 being a portion of what is known as the "Toma de Razon," for the years 1844, 1845, and which said originals continue on file in my office and in my charge and custody.

SEAL

In Testimony Whereof, I have hereunto signed my name officially, and caused my Seal of office to be affixed, at the City of San Francisco, this 13th day of April, 1861.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

[In margin.]—Examined and found correct. Keeper of Archives.

Endorsed.—Filed May, 1st, 1861. W. H. CHEEVERS, Clerk.

Deposition of R. C. Hopkins, on part of the United States.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of California.

THE UNITED STATES, *vs.* JOSEFA DE HARO, ET AL. — In Land Cases, District Court No. 381. Land Com. No.

Be it remembered, that on this first day of May, A. D. 1861, at San Francisco, in the district aforesaid, Blair Laurie, a Commissioner duly appointed by the District Court of the United States for the Northern District of California, to take depositions of witnesses in behalf of the United States in land cases pending in said Court, personally appeared R. C. Hopkins, a witness in behalf of the United States, in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who being duly sworn, testified as follows:

Present—U. S. Attorney, P. Della Torre, and J. B. Williams, Esq., for United States; J. J. Williams, Esq., for claimants.

Questions in behalf of the United States.

Question 1. What is your name, age, and residence, and occupation?

Answer. R. C. Hopkins, lawful age, San Francisco, keeper of the Spanish and Mexican archives in the office of the U. S. Surveyor General.

Q. 2. State how long you have held the position of keeper of said archives, and whether or not you are familiar with them?

A. Since the first of November, 1855, and I am familiar with them.

Q. 3. Examine Exhibit Hopkins, No. 1, attached to this deposition, and state what it is, and where its original is to be found?

A. It is a photographic copy of the original provisional grant with the alleged confirmation thereof, filed in the claim of Francisco and Ramon de Haro for Potrero Nuevo. The original is among the papers of the late Board of Land Commissioners, on file in the office of the U. S. Surveyor General, and there is on file in the Spanish archives of the U. S. Surveyor General, an expediente corresponding to this provisional grant.

Q. 4. Look at the signatures on page two of said Exhibit, and state whether they are the same as similar signatures in the archives, which are considered genuine?

A. The signatures of Manuel Micheltorena and Manuel Jimeno, found upon page two upon said Exhibit, are similar to the signa-

tures of those gentlemen found upon official documents in said archives, and I think they are genuine.

Q. 5. Answer same question with respect to signatures found on page three of said Exhibit.

A. The signatures of Micheltorena and Manuel Jimeno, found upon page three of said Exhibit, are unlike the signatures of those gentlemen found upon official documents in said archives.

Q. 6. Examine Exhibit Hopkins No. 2, attached to this deposition, and state what it is, and where its original is to be found?

A. Exhibit No. 2 is a photographic copy of the second grant, the original of which is on file among the papers of the late Board of U. S. Land Commissioners, which papers are now in the custody of the U. S. Surveyor General.

Q. 7. Examine the book now shown you, being Photographic Exhibits in the case of the United States vs. José Y. Limantour, on file in the case, and state whether the four pages of Exhibit Hopkins No. 2, filed with this deposition, are identical with the four pages numbered 60, 61, 62, 63, in said book of Photographical Exhibits?

(Objected to as irrelevant.)

A. They are.

Q. 8. State whether the seal shown on page 60 of Photographic Exhibits is the same seal as is shown on page 1 of said Book of Exhibits?

(Objected to as irrelevant and incompetent.)

A. It is the same.

Q. 9. On what paper is the seal shown on page 1 of said Book of Photographic Exhibits?

(Objected to as irrelevant and incompetent.)

A. Page 1 of said Book of Exhibits is a photographic copy of an alleged grant to José Y. Limantour of part of the city of San Francisco.

Cross-examined by Claimants.

Question 10. Is not the seal prefixed to the grant on page 1 of Exhibit Hopkins No. 1, like in all respects the genuine seal of the Mexican Government on similar documents?

A. It is.

Q. 11. Are not the signatures of Manuel Micheltorena and Manuel Jimeno to the grant on page 2 of said Exhibit, undoubtedly genuine, and is there not in the archives of the Spanish or Mexican Government in the custody of the Surveyor General of the U. S. for California, a corresponding expediente?

A. I think the signatures referred to on said page are genuine, and there is on file in the Spanish and Mexican archives in the

custody of the U. S. Surveyor General, an original expediente corresponding with this grant. This expediente is numbered and registered on the Jimeno Index. There is also a note of Toma de Razon of said grant, found upon the proper book of the registry of grants for the years 1844, 1845.

R. C. HOPKINS.

Subscribed and sworn to, before me this first day of May, 1861.

BLAIR LAURIE, Commissioner.

Endorsed—Filed first of May, 1861. W. H. CHEEVERS, Clerk.

Exhibit Hopkins, No. 1.

[First Page]

Sello Cuatro Dos Reales—Habilitado provicionalmente por la Aduana Maritima del puerto de las Californias, para los anos de mil ocho cientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA. PABLO DE LA GUERRA.

[SELLO.] El Cuidadano, Manuel Micheltorena, General de Brigada del Ejercito Mexicano, Ayudante General de la plana mayor del mismo Governador Comandante-General é Inspector del Departemento de las Californias.

Por cuanto, los cuidadanos Francisco y Ramon de Haro, han pedido la consecion del Potrero que se nombra de San Francisco, desde la boca de los esteros con la lomeria que lo circunda y habiendose practicado las diligencias y averiguaciones cocsernientes segun lo dispuesto per leyes y reglamentos de la materia, he venido en uso de las facultades que me son conferidos, en nombre de la Nacion Majicana, en permitirles la ocupacion del Potrero mencionado,

[Second Page.]

sugetandose á la medicion que se haga de los egidos del establecemiento de San Francisco y á las condicionet siguientes:

1. No podran por ningun titulo venderlo ni enagenarlo, sin perjudicar algunos bienes que tubiere el establecemiento de San Francisco.

2. No impediran las travacias, caminos y servidumbres, destinandolo para el cultivo y bienes que intentan introducir, pero dentro de unn año á los mas estará ocupado.

3. El terreno de que se hace mencion es de medio sitio de ganado mayor y si controvinieren á estas condiciones perderán su derecho á esta concesion provicional que se le entrega á los intersados para su resguardo y demas fines.

Dado en Monterey, á primero de Mayo, de mil ochocientos cuarenta y cuatro. MICHELTORENA.

MAN'L JIMENO, Srio. Que-

[Third Page.]

da tomada razon de esta licencia provicional en el libro respectivo á fo 8. JIMENO.

MONTEREY, Mayo 24, de 1844.

Previas las averguaciones correspondientes al potrero, si podrá estorvar al egido del nuevo pueblo formado en la Yerba Buena ó perjudicar á los vienes de la Mision y trafico de camino ó servidumbre publica y en vista de no ser perjudicable y de acuerdo con la Honorable Asemblea Departmental por decreto de hoy he venido en concedarlo en propriedad el terreno solicitado por los cuidadanos Francisco y Ramon de Haro, para que hagan de el uso que mejor les convenga. MAN'L MICHELTORENA.

MAN'L JIMENO, Srio.

Recorded in the office of the Alcalde in Book A of Spanish Records, pages 66 and 67, San Francisco, January 12th, 1858, 12 M. JOS. HENRIQUE, Rec. Clerk.

Exhibit Hopkins No. 2.

Sello primero ocho pesos. Habilitado provicionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para el año de mil ocho cientos cuarenta y tres.

MICHELTORENA. MANUEL CASTANARES.

[SELLO.] Manuel Micheltorena, General de Brigada del Ejército Mejicano, Ayudante General de la Plana Mayor del mismo, Gobernador Comandante, General é Inspector del Departamento de Californias.

Por cuanto los ciudadanos Ramon y Franco de Haro, Mejicanos por nacimiento, han pretendido para su beneficio y el de sus hermanos, previa licencia en forma de su padre Dn Franco .de Haro, el paraje llamado el potrero, en la ex-mision de Dolores, situado en frente de las fábricas de la espresada ex-mision hácia la bahia y cercado con pared de piedra en estencion de tres mil varas de largo, é igual número de ancho, poco mas ó ménos, cuyo terreno concedido provicionalmente, y han justificado tenerlo ocupado con sus bienes : practicadas preveiamente las diligrncias y averiguaciones concernientes segan lo dispuesto por las leyes y reglamentos da la materia, usando de las facultades que me confiere las mismas y de las amplias con que el supremo Gobierno me ha investido, à nombre de la nacion Mejicana y en remuneracion de los servicios y alcances contra la hacienda publica que hasta esta fecha tiene el espresado Dn Franco de Haro, padre de dichos Ramon y Franco de Haro, les concedo el mencionado terreno del

Potrero, declarandoles la propriedad de él por las presentes letras pidieudo en virtud de este despacho tomar cuando les convenga la correspondiente posesion juridica. Por tanto mando que teniendose por firme y valedero el presente titulo se tome razon de él y se entregue à los intersados para su resguardo y demas fines.

Dado en Monterey a los diez y ocho dias del mes de Setiembre de mil ocho cientos cuarenta y cuatro. MICHELTORENA.

MANUEL JIMENO, Secretario.

En el pueblo de Yerba Buena á los cinco dias del mes de Marzo, de mil ocho cientos cuarenta y cinco, el ciudadano Juan Nepo. Padilla, Juez de Paz de dicha demarcacion dijo: Que en virtud de haber solicitado la posecion juridica los ciudadanos Ramon y Francisco de Haro, del parage nombrado el Potrero de la ex-Mission Dolores, que les fué concedido por el superior Gobierno del departmento, con fecha ocho del mes de Setiembre del año proxº pasdo como consta del presente titulo por el cual manda pasar al parage del potrero mencionado para proceder á la medicion y señlalamlento de linderos que se ha pedido: Asi el Juez referido decréto mando y firmo. JUAN NEPO. PADILLA.

En el mismo dia mes y año paso el Juez de Paz mencionado en el acto anferior acompañado de los testigos de asistencia al parage nombrado el Potrero de la ex-Mission de Dolores á efecto de dar la posesion juridica por los ciudadanos Ramon y Francisco de Haro, y puesto en la parte oeste del potrero se midieron tres wil (3,000) varas de largo hasta la orilla de la Bahia de San Francisco y del norte al sur otras tres mil varas, resultando que dicho Potrero contiene tres mil varas de terreno en cuadro ó poco mas, del cual se les dio la posesion juridica mediante las formalidades de derecho, y para la devida constancia lo firmo el juez con los testigos de asistencia. Doy fé. JUAN NEPO. PADILLA.

GREGORIO ARIONES,
FRANCISCO GUERRERO. } Testigo de ass'a.

[*Endorsements on Exhibit Hopkins, No.* 1.]

No. 101.

Exhibit C, No. 1.

Thompson Cambell,
P. L.

Annexed to the deposition of Abel Stearns, before Commis. Thompson Campbell.

March 2*d*, 1854.
Geo. Fisher,
Sec'y.

No. 101.

Josefa de Haro, et al.

Potrero de San Francisco.

Exhibit C, No. 1.

Grant.

Filed in Office March 2*d*, 1854.
Geo. Fisher,
Sec'y.

Recorded in Rec. of Evid., Vol. 18, *p.* 528, *p.* 529.

Opinion Rejecting Claim, Delivered by O. Hoffman, District Judge.

DISTRICT COURT OF THE UNITED STATES,
Northern District of California.

THE UNITED STATES
vs.
JOSEFA DE HARO, ET AL. } No. 381.

On the 12th April, 1844, Ramon and Francisco de Haro presented a petition to the Governor, in which they alleged that, being compelled to remove the cattle of their deceased mother from the rancho of José Antonio Sanchez, they desired the grant of a small piece of land, called the Potrero de San Francisco, in extent, from north to south, 2,288 varas, and from east to west, 2,508 varas. They further stated that the land could be enclosed, and that they intended to place in it tame cattle, as their father's land was insufficient, and as they had obtained, being minors, his permission to make the petition.

This petition was, on the 29th April, referred to the Secretary, who, on the same day, reported that the land was vacant, as the Mission of San Francisco, within the lands of which it was included, had no property whatever. But he suggests that inasmuch as the *ejidos* of the Pueblo had not been designated, the petitioners might, in the meantime, occupy the land under a provisional license.

In pursuance of this report, a document was signed and issued by the Governor, in which he declares that in conformity with the laws and regulations governing the matter, he has resolved to permit the petitioners to occupy the land, subjecting them to the measurement which may be made of the *ejidos* of the establishment of San Francisco, and subject to the following conditions, etc., etc. The third condition is as follows: "The land of which mention is made, is one-half a square league, and if they violate these conditions they will lose their rights to this provisional concession, which is delivered to the parties for their security and for these ends."

The expediente containing these various documents is found in the archives. The concession is noted on Jimeno's Index, and the Toma de Razon for 1844. No doubt of their genuineness can therefore be entertained. But on the sheet containing the copy of the provisional license delivered to the party interested, and now produced by the claimants, is found a grant dated May 24, 1844, purporting to be signed by the Governor, and reciting that, having ascertained, on proper inquiry, that the grant will neither interfere with the limits of the new town of Yerba Buena nor be injurious to the Mission, he (the Governor) "has determined, in accordance

with the opinion of the Departmental Assembly, expressed in their decree of this date, to grant the land in full property to Ramon and Francisco de Haro, that they may do what they please with it." The claimants also produced before the Board a second grant, dated September 18th, 1844, purporting to have been made by Governor Micheltorena, in which the land is described as of the breadth of 3,000 varas, and of the same number of varas in length, and the de Haros are declared the owners of it in full property, in consideration of the services rendered by, and the indebtedness of the public treasury to their father, Don Francisco de Haro.

The first of these two grants, viz: that written on the same sheet of paper as the provisional license, and purporting to ratify and make absolute the latter, was clearly proven before the Board to be a forgery. It was virtually abandoned by the claimants, by filing, on the 2d March, 1854, the second grant, dated September 18th, 1844.

On the faith of this title paper the claim was confirmed by the Board, though not without grave doubts as to its genuineness. The cause having been appealed to this Court, further proof was taken, and on the hearing, the second grant also, with the series of perjuries by which it was attempted to be supported, was formally abandoned by the counsel for the claimants, and the claim to a confirmation based solely on the provisional license above mentioned, and the proofs showing an occupation under it.

It is apparent from the terms of this document that the Governor refused to accede to the petition of the de Haros for a grant of the land. But inasmuch as they required a piece of land whereon to place the cattle of their mother, which could no longer remain on the rancho of Sanchez, the Governor determined to allow them to occupy, temporarily, the tract solicited, as it was not then used by the Mission.

The language of Jimeno indicates with entire precision the nature of the rights intended to be conceded. He speaks of it not as a provisional grant, but a "provisional license" to occupy land. In the document issued by the Governor he declares that "he has determined to permit them to occupy the land;" and in the third condition the usual phrase which declares that the party shall lose his right to the land *(al terreno)* in case he violates the conditions, is altered to "he shall lose his right to this provisional concession."

That this change of phraseology was not accidental is apparent on examination of the copy of the permit retained in the archives. This document is in the handwriting of Jimeno. In writing the last condition he had evidently pursued the usual form and written "*perdera su derecho al terreno y será*," etc., but recollecting that

the instrument was not a grant and conferred no right "to the land," he has erased those words, and substituted the phrase above quoted, "*perdera su derecho a esta concession provisional*," etc.

A similar alteration in phraseology appears in the note by Jimeno, of the recording of the grant. Instead of the usual form, "*Quena toma de razon de este titulo en el libro correspondiente*," the phrase "*Queda toma de razon de esta licencia provisional en el libro correspondiente*" is substituted, indicating the clear discrimination in Jimeno's mind between a grant, whether absolute or provisional, and the mere license to occupy, which he was signing. As observed by the counsel for the United States, "These acts of Jimeno give character to the document signed by Micheltorena, and fix its meaning with a certainty."

It is urged on the part of the claimants, that this provisional license carried with it the promise of the absolute fee, or that it was in fact a grant defeasible only in the event that the land was included within the *ejidos* to be measured; and as that event has become impossible, that the grant is now single and absolute.

But we have already seen, by the terms of the document itself, as well as by the language of Jimeno with regard to it, that the right conferred was a mere license to occupy, and that not permanently, but "in the meanwhile" until the *ejidos* should be measured. The instrument contains no words of grant, either provisional or otherwise, of the land; and it must have been known to the Governor and Jimeno that the lands must eventually be included within the four leagues which was ordinarily assigned to pueblos as *ejidos*. The petition of the de Haros showed not only that they wished for a grant of the land, but that they were then in want of some place on which to put their mother's cattle. The Governor, though he refused to grant the land, very naturally consented to its temporary use for the purpose designated, and the documents issued to the parties is precisely such as would effectuate such an intention.

I think it very clear that this instrument cannot be regarded as a conditional grant, defeasible only on the measurement of the *ejidos*, but that it is a concession, not of any land, but merely of the right to occupy land.

But it is urged that under the Mexican system, a concession, even of this nature, implied a promise that the full title should be given; and when followed by possession and occupation, that an equity arises which the United States are bound to respect.

In support of this view the cases of the United States *vs.* Alviso, decided by the Supreme Court, and United States *vs.* Chaballa, and United States *vs.* Bidwell, decided by the Board and this Court, are relied on. In the case of Alviso the claimant had peti-

tioned the Governor for a grant of the land and permission to occupy while the proceedings for the perfection of the title were pending. This petition was granted, and the *administrador* of the ex-Mission of San Francisco directed to report. In 1839 this order was exhibited to the Prefect, who agreed to reserve the land for the claimant, and that he might occupy it, referring him to the Governor for a complete title.

In 1840 the Administrador reported that the land was vacant and did not belong to the Mission or any private person. The testimony showed that the occupation of the claimant commenced in 1840, and had continued for fourteen years; that he had improved and cultivated the land, and that his family resided on it.

No objection was suggested why the claimant should not have been a colonist of the portion of the public domain solicited by him, and of which he had been recognized as proprietor since 1840. The Court, under these circumstanses, refused to disturb his ancient possession.

It will be perceived that this case differs from that under consideration in several important particulars.

The land solicited was situated on the shores of the ocean, at a distance of from twenty to thirty miles from the Mission of San Francisco de Assis. It was vacant and was not recognised as the property of the Mission or any private individual. The propriety of granting it was recognised by the Prefect, who permitted the claimants to occupy it, and shown by the report to the Administrador, to whom the Governor referred the petition. There could, therefore, as observed by the Supreme Court, have existed no objection to making the grant. The right of occupation conceded to the claimants was thus clearly in expectation of the full title, and was in terms solicited by him and granted by the Governor "while the proceedings for the perfection of the title were pending."

When, therefore, after having taken possession of the land, improved, cultivated, and built a house on it, in which he had resided as the recognised owner for fourteen years, Alviso presented his claim to the Board, it was manifestly unjust to disturb him, because his title had not been perfected.

But in the case at bar the land solicited would evidently fall within the *ejidos* of the Pueblo, whenever they should be measured. It had, even before the date of the petition, been inclosed by a wall built by the Fathers of the Mission.

The grant solicited was refused, but a permission to occupy temporarily was given, not, as in Alviso's case "while further proceedings for the perfection of the title were pending," but merely until the *ejidos* should be measured. We look in vain in the expe-

diente for any evidence, not only of a promise but even of an intention or expectation, on the part of the Governor, to grant the land in full property.

But admitting that such an intention or expectation could be inferred from the mere fact that the right to occupy the tract in question temporarily with their mother's cattle, was conceded to the petitioners, the case in other respects is far weaker than that of Alviso.

It is, I think, conclusively established by the proofs, notwithstanding some evidence to the contrary, that the petitioners neither resided on nor cultivated the land. After the grant, as before, they continued to live with their father at the Mission, or at his rancho of San Bruno. They, no doubt, repaired the old wall which had been erected by the priests, and which, as the land was ~~enclosed~~ on three sides by water, served to enclose it. On this tract they placed their cattle and horses, which were readily attended to by themselves or their vaqueros, residing at the Mission. It may well be doubted whether this use, under these circumstances, of a valuable and convenient piece of land immediately adjoining the Mission, and not more than a league distant from the present city of San Francisco, and which had even been inclosed by the Fathers, could be considered such an occupation and cultivation of vacant land as under the colonization laws would raise an equity which the Mexican or this Government is bound to respect. It would seem that the petitioners rather received a benefit from, than conferred one on the Government.

It is to be observed that the Supreme Court did not in the case of Alviso, nor have they, in any other, decided that a mere permission to occupy, followed by actual occupation, is sufficient to entitle the claimant to confirmation. The contrary doctrine is clearly announced in the case of U. S. *vs.* Garcia, 22 How. 282.

It is evident that each case must depend on its own circumstances. Where, as in Alviso's case, the permission was evidently given in contemplation of the future title to be issued; where the reports are favorable and recommend a grant; where no objection is suggested why the claimant should not have been a colonist of that portion of the public domain; where the land is vacant, and has been occupied and dwelt upon by the claimant for fourteen years, the claim will be confirmed.

But even in such a case it is evident that the confirmation is based upon the equity arising from the ancient possession, under a ~~new~~ title, rather than upon any promise to make a grant, implied from the mere fact of a permission to occupy.

With respect to the case of U. S. *vs.* Chabaya decided by this

Court, it is sufficient to say that the permission was given to occupy "while the suitable procedure was going on," that the report of the Prefect was not only favorable to the issuance of the grant, but informed the Government that "the opposition made to it by the residents of the Pueblo had no other design than to remove Chabaya from the land he had occupied for many years, and was absolutely destitute of justice." And what is more important, that it appeared by the proofs that in 1837, Chabaya built a house upon the land, fenced in a considerable portion of it, and had, at the date of the confirmation, been residing on it with his wife and numerous family for twenty-two years.

The case of Bidwell was confirmed by the Board; but the confirmation was based on the general title of Micheltorena, at that time supposed, when followed by occupation and cultivation, to have confirmed incontestable rights.

The claimant, it is true, presented two provisional grants. These, it appeared, were issued by the Governor in that form, not from any objection to making the full title, but on the advice of Jimeno, who, after reporting favorably to the petition, suggested "that on account of the Governor's contemplated visit to that part of the country, the land should be granted provisionally, subject to the ulterior disposition which His Excellency might see fit to make of the matter."

Under this grant the land was occupied and cultivated and a house and corral erected upon it.

It will be observed that in this case the concession was not of a mere license to occupy, but a grant (~~the~~ provisional) of the land. In their opinion the Board say: "From the language of the provisional title paper in this case in connection with the circumstances under which it issued, it may be fairly understood to have been the intention of the Governor to make a grant of the land in fee to Dickey and his heirs, subject only to be defeated by some subsequent act of the Governor, and no such act having taken place, it may perhaps be considered as absolute." It is precisely in these particulars that the grant to Dickey differs from the permission to occupy given to the De Haros.

The intention of the Governor, referred to by the Board, was not an intention to make a grant at some future period, but an intention to make a present grant, or rather that title issued by him should operate as a grant unless defeated by some subsequent act of his own.

But no such effect can be attributed to the license given in the case at bar. The most that the ingenuity of counsel has been able to discover in it is an implied contract, that if the petitioner complied with the conditions, he should have a title unless the

land should be embraced within the *ejidos* of the Pueblo. It is evident, therefore, that even if the decision in U. S. *vs.* Bidwell had turned upon the point we have been considering, and that decision were binding on this Court, it would have no application to the case at bar.

The only ground on which a confirmation of this claim can plainly be urged is that just referred to, viz: that the document issued by the Governor amounted to a declaration that the party might go into possession, with the implied promise that if he fulfilled the law, and the land was not required for *ejidos*, he should have a title.

But neither the terms of the concession, nor the circumstances under which it issued, can, in my judgment, admit of such a construction. If the permission to occupy had been given "while the proceedings to subject the title were pending," if the Governor had indicated a willingness to grant, if the reports had been favorable and no obstacle were suggested why the grant should not have been made, if the claimant had gone into possession as owner, and had lived with his family on the land for fourteen years, as in Alviso's case, or twenty-two years, as in the case of Chabaya, the claim should, in analogy to those cases, be confirmed.

But in this case, the permission is given to occupy only until an assignment of the land to the Pueblo is effected. The Governor not only indicates no willingness or intention to grant, but, in obedience to Jimeno's suggestion, he refuses to grant, and, *ex industria*, limits the concession to the permission to occupy land not then used by the Mission. The objections to making the grant appear from the report of the officer to whom it was referred; and finally, the land at the conquest of the country, though it had been used by the claimants for a little more than two years, had never been inhabited or built upon, nor had any act been done with reference to it, which, like the long residence, occupation and cultivation of Chabaya and Alviso, might have raised an equity in favor of the claimants. It is, perhaps, not unfair to add, that the forgeries and perjuries which have been so freely resorted to, to impart additional validity to this title, may justly be considered as admission on the part of the claimants of the infirmity of the only title paper they, in fact, received.

My opinion is that the claims should be rejected.

Endorsed—Filed February 15th, 1862. W. H. Chevers, Clerk.

Decree Rejecting Claim.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court Room in the city of San Francisco, on Wednesday the nineteenth day of February, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The Honorable Ogden Hoffman, District Judge.

THE UNITED STATES, *vs.* JOSEFA DE FARO, ET AL. } No. 381.

This cause came on to be heard on appeal from the final decision of the Board of Commissioners to ascertain and settle the private land claims in the State of California, under the Act of Congress approved March 3, 1851, upon the transcript of the proceedings and the decision of the said Board, and the papers and evidence on which said decision was founded, and upon the further evidence taken in this Court, by order of the Court; and it appearing to the Court that the said transcript was duly filed according to law, and the cause regularly brought to a hearing: Now, therefore, counsel for the respective parties having been heard, and due deliberation had in the premises, it is hereby ordered, adjudged and decreed, that there is error in the decree of the said Board of Commissioners, and the said decree is hereby reversed.

And it is further ordered, adjudged and decreed, that the claim of the appellees, Josefa de Haro, et al., is invalid, and the same is hereby rejected, and the petition of the said claimants, Josefa de Haro, et al., is hereby dismissed.

OGDEN HOFFMAN, U. S. Dist. Judge.

Endorsed—Filed February 19th, 1862. W. H. CHEEVERS, Clerk.

At a stated term of the District Court of the United States of America, for the District of California, held at the Court room in the city of San Francisco, on Monday the twenty-second day of October, in the year of our Lord one thousand eight hundred and sixty-six.

Present: The Hon. OGDEN HOFFMAN, District Judge.

JOSEFA DE HARO, ET AL., *vs.* THE UNITED STATES. } District Court, No. 381.

Land Commission No. 101.

This day came the said claimants, by their attorney, and, on their application made in open Court, Delos Lake, Esq., United States District Attorney, being present, it is ordered by the Court

that an appeal in behalf of said claimants from the final decision of this Court rendered in this cause, on the nineteenth day of February, A. D. 1862, be and the same is hereby granted; and that a certified Transcript of the pleadings, evidence, depositions and proceedings in the said cause, be sent to the Supreme Court of the United States without delay.

OGDEN HOFFMAN, Dist. Judge.

Filed Oct. 2[illegible], 1866.
GEO. C. GORHAM, Clerk.
By Dan. T. Sullivan, Deputy.

United States of America.

To the United States of America, and also, to Delos Lake, Esq., United States District Attorney, in and for the District of California. GREETING:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, District of Columbia, on the first Monday of December next, pursuant to an appeal and an order of appeal, taken and filed in the Clerk's Office of the District Court of the United States, in and for the District of California, on the twenty-second (22) day of October, A. D. 1866, in a certain land claim, lately pending and determined in said District Court, wherein Josefa de Haro and others were claimants for the place called Potrero de San Francisco, and are now appellants, and the United States is appellee, to wit: Case Number 381, which was appealed to said District Court from the decree of the United States Board of Land Commissioners, pursuant to the provisions of the Act of Congress, approved March 3d, 1851, entitled "An Act to ascertain and settle the private land claims in the State of California," to show cause, if any there be, why the Judgment and Decree of said District Court so appealed from, rejecting the claim of the claimants therein, should not be corrected, and speedy justice not be done to the parties in that behalf.

Witness, the Honorable Salmon P. Chase, Chief Justice of the United States.

OGDEN HOFFMAN,
U. S. Dist. Judge for the District of California.

I admit due personal service of a copy of the foregoing citation.

DELOS LAKE,
U. S. Atty., Dist. Cal.

Oct. 22, 1866.

Filed Oct. 22d, 1866.
GEO. C. GORHAM, Clerk.
By Dan. T. Sullivan, Deputy.

I, GEO. C. GORHAM, Clerk of the Circuit Court of the United States, and *ex officio* Clerk of the District Court of the United States, in and for the District of California, do hereby certify

that the foregoing is a full, true and correct transcript of the record on file (in the Clerk's Office of said District Court) from the Board of Land Commissioners, together with the depositions, exhibits, orders, opinions, and decree filed in the office of the Clerk of said District Court, entitled, pertaining and relating to the Case No. 381, entitled "*The United States* vs. *Josefa de Haro, et al.*, and the same constitutes a full, true and correct Transcript on Appeal.

[Seal U. S. District Court, Nor. District of California.]

In witness whereof, I have hereto set my hand and affixed the seal of said District Court, this 29th day of October, A. D. 1866.

[U. S. Int. Rev. Stamp, 5 cts. canceled.]

GEO. C. GORHAM, *Clerk.*

Supreme Court of the United States.

THE UNITED STATES vs. DE HAROS.

HEADS OF THE

Argument of J. S. Black for Claimants.

Our claim is for the confirmation of the *potrero* bounded on three sides by the waters of the bay, and enclosed on the other side by a stone wall, containing less than a quarter of a league. For this our grant was made. Of this we took possession. This was confirmed to us by the Land Commission, and we have never claimed any more. Our opponents allege, what is most extraordinary, that the claim covers land twice as large in extent and more than five times greater in value. The object of this is to arouse feelings of hostility against us in the minds of those who occupy land outside of our claim. Thus they draw the "sinews of war" to make this fight from persons who have not the slightest interest in the controversy. Thus, also, they get the excuse for making speeches to this Court about "speculators," meaning thereby persons who bought the title from the original claimants, some of them, perhaps, in early times, but who bought in good faith and paid what was then a full price.

The loud denunciation of our cause upon this ground is the

grossest appeal ever made to the supposed prejudices of a court. It is directed to a feeling unworthy of any court. The person who made it manifestly supposed himself to be impressing you profoundly, and therefore must have believed every judge on the bench to be wholly destitute of that impartiality which is no respecter of persons.

There are but two questions in this case, both of them exceedingly simple:

First. Are the records and documents which we have produced entitled to faith and credit as genuine papers?

Second. Do they, if genuine, constitute such a title as this Court by the act of 1851, is bound to confirm?

The records which we rely on are a petition by Francisco and Ramon de Haro, the written assent of their father to the application which his sons were making, the favorable report of the alcalde or judge of the proper district, the order of reference made by the Governor to the Secretary for further information, the report of Jimeno, the decree of concession, and the grant itself. These papers are all found among the archives of the Mexican Government in the form of a regular expediente, marked and numbered in the handwriting of the persons who are known to have been the custodians of the records at that time. Moreover, they are registered in the proper book and included in an authentic catalogue of titles made by Jimeno. Besides that, we produce the original grant itself, which was given to the grantees at the time of its date. This title is so connected with all the other records in the office, that, if it be not genuine, there is and has been no genuine evidence of a title to any land in all California. Being a record, it is conclusive, and not open to any contradiction by means of extrinsic proof. Its probative force cannot be increased or diminished; it imports absolute verity.

It appears that the grantees, immediately after the date of

the grant, went into possession of the land, stocked it with three hundred head of horned cattle, forty tame horses, and a band of mares. The young men were killed in 1846, and their father succeeded to the ownership of their real and personal property. He remained in possession until 1848 or 1849, when he also died and was buried, leaving this, with the rest of his property, to his family, which consisted of five or six daughters and one small boy.

I do not mean to go minutely into the evidence on this question of possession; it is not necessary. If you will read the testimony of Mr. Julius K. Rose, who was the administrator of Francisco de Haro the elder, you must be satisfied that there was actual possession in the grantees, and those claiming under them, from the date of the grant down to the present day. He was a perfectly respectable man, of wholly unimpeachable character, and he testifies that when he was appointed administrator he found the land in the possession of the family and of their acknowledged tenant, a man named Treat. The ground was enclosed by a stone wall, for the repair of which he himself paid one thousand dollars.

Their possession may not have been a very rigid one. It is possible that they did not impound every stray cow that came there, or bring suit for trespass against her owner; but they held and kept possession as fully as any other owner kept possession of his land in that country, and more so, for there was not another quarter of a league there of which it can be said that it was actually enclosed and devoted to the use of the owner. Rose proves it certainly to have been in the actual, open, notorious, and exclusive possession of the owners in 1849. The legal presumption of continuance applies to that possession, backward and forward. When a person is proved to be in the actual occupancy of land to which he has a title, on a particular day, you do not suppose that he went

in the day before, or went out the day afterwards; the presumption is that he was in from the time the right accrued, and that he remained in until there is some evidence which proves that he went out.

We have, then, the case of a grant regularly made and properly recorded, of which the proofs are conclusive, so that no presumption against it or for it can arise out of any extrinsic fact.

Besides the papers I have spoken of and the facts mentioned, there are some others which are admitted to be forgeries, and which we disclaim, repudiate, and denounce as emphatically as they are denounced by our opponents; but they do not affect the case, because, in the first place, there is no guilty connection established between the claimants and those forgeries. They were the work of other hands, and unless they were willfully and corruptly introduced into the case by the claimants, for the purpose of misleading the Court, they do not and could not in any case create against us the presumption *in odium spoliatoris* which otherwise would be proper enough. Besides, if these forgeries had been perpetrated by the claimants themselves or their counsel, it could have no effect upon a case like this, where the title is conclusively proved by the record. You are not administering punitive justice, but deciding a question of fact. You have no power to confiscate a title which you know to be true, because the party who makes the claim may have been guilty of acts which show him to be a criminal.

Another subject wholly foreign to this case has been introduced in a way which we think gives us some right to complain of the Attorney General, who ought neither to have done it himself, nor permitted it to be done by others. It is alleged that a pueblo existed in that neighborhood. When it was established, or where, is not stated; but the allegation is that

the pueblo is older than our grant, and that the four leagues of land to which it was entitled would include the *portrero*. I deny the fact; but my colleagues have chosen to answer by a sort of demurrer which assumes it to be true. Their reply upon this point is doubtless perfectly correct. They say that if there was a pueblo there previous to 1844, and so situated that four leagues surrounding it would include the land we claim, still that fact did not take away the authority of the Governor to make grants under the colonization laws until the common lands of the pueblo were actually measured and taken possession of by the town authorities for the use of the inhabitants. This was certainly the law, if you can make any inference concerning the law of any country from the acts of those officers who are appointed to administer it. The very fact, which they allege, that this grant was made within the pueblo limits, shows the law to have been so regarded by the Governor, the Secretary, and the alcalde. Those three men knew better than any other three then living on the earth whether there was a pueblo there or not. If there was, Hinckley must have been part of its personal and political organization, charged with the special duty of guarding its interests. It could not have been established except by the act of the Governor, and that act must have been made a matter of record. Jimeno was as familiar with all the records as he was with the tie of his garter. Micheltorena was a man of large capacity, a writer of considerable eminence both in prose and poetry. Whatever else may be said of him, no one can doubt his diligence in the discharge of his duties. It would have been inexcusable as well as unaccountable ignorance in him not to know the political subdivisions of the country which he was sent to rule over. The making of this grant was itself a solemn adjudication by all three of these persons, either that in point of fact

there was no pueblo there, or else that in point of law it made no difference whether there was or not.

Such, too, was the decision of the judge of the circuit court in the case of the City of San Francisco *vs.* The United States. The same inference must be drawn from numerous other grants made within these limits, as well as within the limits of other pueblos.

But that is not my point. I protest against the introduction of this subject, because there is no evidence about it on the record before you. The title of the pueblo was not shown in this cause, nor is the decree of the district court upon that title a part of this record, nor could it in any legal way be made evidence against us. I insist that we have a right to a just determination of this cause upon those facts which we had an opportunity of meeting, and not upon any testimony whatever which was given in another case to which we were not parties.

If they say that the adjudication in favor of the city of San Francisco is a historical fact of which you are bound to take notice, then I demand that you shall consider another historical fact which is equally notorious, namely, that the claim of the city was founded upon the most atrocious forgery and the most bare-faced perjury ever seen in a court of justice. There never was a town or pueblo on that peninsula which had any kind of legal or corporate existence until General Mason, in 1849, exercising the jurisdiction of military governor, laid out a town and called it by the name of San Francisco.

Let me say, in connection with this subject, that I mean to express no doubt about the correctness of the decision made by the circuit court in favor of the city. But that decision was based upon the legislation of Congress. The United States had given up their rights, and passed them over to the

city by a legislative grant. But there existed no power, legislative or judicial, which could deprive us of our title, and therefore the circuit court excepted out of its decree all lawful grants, ours among the number, which had been made, either by Mexico or the United States, previous to the date of the legislative grant to the city of San Francisco. If the title of the city had been set up in any case where we were parties, we would have shown it to be unfounded. But they dared not do this. When their claim came here upon appeal from the circuit court, we were anxious to meet it; and we would have utterly destroyed it if the opportunity had been given us to do so; but the Attorney General consented, at the solicitation of parties interested in its favor, to dismiss the appeal. He did this upon the ground that the United States and the city were the only parties to the cause, that the United States had given up their interest, and that the rights of third parties could not be affected by the decree. This was the only justification of his conduct in dismissing the appeal. What we complain of now is that he should attempt to make use of that very decree for the purpose of destroying our rights. We might complain of it more loudly, except for the consideration that it cannot, in law, or in reason, or in justice, do us any real harm. But we are grieved and disappointed that he should make such an attempt, or put us to the trouble of replying to it.

The only question which is really worthy of a moment's discussion is upon the construction of our record: Does it or not give us a title to the land? If we have any kind of title whatever, you are bound by the act of 1851 to confirm it; for that act declares that you shall confirm all claims of right or title to lands derived from Mexico or Spain. This is to be understood according to the common law meaning of the words; an English word is to be understood in its English sense.

What, then, is a title by the common law? Littleton, Coke,

and Blackstone, and after them all elementary writers, define it to be "the means whereby the owner of lands and tenements hath the lawful possession of his property." Therefore, wherever any person has a lawful right to the possession of land, coupled with an interest in the land, he has a title to the land, and you cannot refuse to confirm it. It must be confirmed whatever be its special modifications; whether it be absolute or conditional; whether it be an estate in fee simple or fee tail, for life or for years; whether the evidence of it be a public grant or a private conveyance; whether it be a present right of possession, or enjoyable at some future time.

We are all acquainted with the familiar case where a person, who, by deed, was authorized to go upon land for the purpose of felling timber, was held to have a title upon which he could maintain ejectment. It was not necessary that he should bring an action on the case as for the disturbance of an easement, nor was he driven into a court of equity for specific relief. It has never yet been suggested in this Court that your duty to confirm Mexican titles in California was confined to cases in which the claim was founded upon a title in full property. You have held the direct contrary in one of the most important cases that ever came before you, The United States *vs.* Castillero. There the counsel who appeared for the United States expressed their conviction that a mining right was not such a title in land as the Court could confirm, that it was a mere incumbrance or easement, an incorporeal hereditament, annexed to and arising out of the land; but the Court, by the mouth of Judge Clifford, declared that we were mistaken, that the miner had not only a right to dig and carry away minerals, but the right to occupy and keep possession of a certain quantity of land in the name of *pertinencias*, around the mouth of the mine; and having this right of possession, with the privilege of using it for his own profit, he

had a title in the land which it was the duty of the Court to confirm. And this you did, although the right of possession was strictly confined to a single purpose, and fettered with such a variety of conditions as rendered it liable to be forfeited any day in the year.

These are elementary principles. They cannot be denied. If they are true, then, inasmuch as this grant gives us the right to take possession of the land for purposes of culture and pasturage, we surely had a title under the grant. If we ever had a title we have one now, unless it can be shown that it has expired by its own limitation, or become forfeited by the breach of some condition annexed to it at the time it was made.

But it is alleged that this was a mere license. I say it was a grant; but suppose it to be a license, what then? An executed license comes as clearly within the definition of a title at common law as any other species of right to land. Where the owner of land has given a mere naked license by parol, and without consideration, to another, which authorizes that other to go into the possession of land and use it for his own purposes, and the licensee, in pursuance thereof, has executed the license at his own expense, it becomes an agreement, and the licensee is a purchaser for a valuable consideration. This is the rule established by the decisions of the English courts from the time of the Year Books to the present day. The cases of Garcia, of Rose, and of Serrano, (decided at the present term,) neither of them contravene this principle. Garcia was not licensed to take possession of any particular land. He had a roving commission from Micheltorena to find, himself, any land that would suit him, with a sort of promise that if he succeeded in making a location to his taste he might petition for a grant and get it. This gave him nothing except what he had before by virtue of the colonization laws.

When he returned, two years afterwards, he found the government of the Territory in the hands of Pico and Castro, who refused to make him a grant, as they had refused similar favors to the other friends of the deposed party. Rose was authorized only to take possession for a temporary purpose; and Judge Campbell puts the rejection of the claim upon that very ground, that the license authorized merely a *temporary* occupation. Serrano's case was that of a person who had no license at all from any one authorized to meddle with the public domain.

Let me state my proposition with its proper limitations. I assert that a naked license, when executed, becomes a title in equity, and cannot be revoked; but in order to give it this effect, it is necessary that four things should concur:

1. The license must have been given either by the owner of the land which is the subject of it, or by his accredited agent. Therefore there could have been no valid license to take possession of the public domain in California unless it was made by the Mexican nation, or the political chief of the Territory, who was authorized by law to dispose of it in the name of the nation.

2. To make the title perpetual, it is necessary that it should be a license to keep possession for an indefinite period, or without limitation of time. A license to occupy for a day or a year, or until the happening of a particular event named, can give no right to occupy after the expiration of the time.

3. It must have been executed at the expense of the grantee, but no matter how slight may have been the expense to which he was put.

4. The license must have been given to take and keep possession of some designated land, and not be, as in the case of Garcia, a mere authority to go forth and make choice of such land as would suit him.

If this was a license, it was made by the authority and in the name of the nation which owned and had a right to dispose of the land; the subject-matter of it was particularly designated; it did not authorize merely a temporary occupation, but was given without limitation of time; and it was executed at the expense of the grantee. It is clear that such a license, so executed, if given by a private owner of land, would be a good title in equity, upon which the licensee might demand a deed, and any chancellor would decree that he should have one. What would be binding upon an individual would surely be obligatory upon the conscience of the nation. The principles of equity constitute one of the great standards of decision under the act of 1851. The case of Armijo, decided at the present term, shows that a license from the Governor to occupy is a good title when executed.

But this was not a license. When a deed or grant is made of land to a person, it does truly authorize him to take possession, and therefore, in some broad sense of the word, it may be called a license; but no one thinks of calling a conveyance of the title a license. A grant of the right to occupy land for the grantee's own use is a conveyance of the title. A license may be countermanded at any time before it is executed, but a grant vests the title in the grantee at the moment of delivery.

This was a grant made upon a regular petition, and after a full inquiry into the facts of the case. It was an adjudication by the proper authority that the petitioners were entitled to it; it was accompanied with all the solemnities of a grant; it was recorded in the proper book; the original was delivered to the grantees for their perpetual security; it conveyed to them and vested in them the right of possession, with an interest or estate which gave them the privilege of appropriating the profits to their own personal use.

But you are told that this being a mere right to occupy the

land and to use it for the profit of the grantee, therefore the grantee has no title, but is a mere usufructuary. Let me make a proposition to my friends on the other side: If they can show that any title has ever been made by Spanish or French authority in California, New Mexico, Louisiana, or Florida, which gave substantially any greater dominion over the land granted than what consisted in the right of possession and the right to use it for private purposes, I will consent to give this case up, and they may have it all their own way. What right have you to your lands except the right to hold them and use them? I assert that the right of possession, coupled with the right to use the land, is a title. On the other side it is contended that the right of using the land makes the grantee a mere usufructuary, and not the owner. I am content to leave this question to the Court without further comment. If I am wrong, the law we have learned in the horn-books of the science was a great blunder. If my learned brother is right, Blackstone and Kent are not to be relied on.

But the Attorney General thinks that the title under this grant expired with the life of the first takers. By the common law of England no conveyance, *inter vivos*, will give to the grantee an estate of inheritance, without the use of the word "heirs." Where there are no words of limitation the deed is, by construction of law, a life estate merely. But that rule is purely artificial. Even by the common law it has no application to executory contracts, and is not now applied to the interpretation of wills, because, as Lord Mansfield truly said, it would defeat the actual intent of the testator ninety-nine times in a hundred. The natural rule is, that when one gives land to another without using any words of limitation, it conveys to the grantee all the estate which the grantor had or was able to bestow. This natural construction is the rule of the civil law, and by a thousand cases we know it to prevail in Spain

and Spanish America. Of the eight hundred and three cases which passed through the Land Commission, I venture to say that not ten contain any words of inheritance or perpetuity, and where such words have been inserted in the grant, it was manifestly not for the purpose of defining the duration of the estate, but merely to show the grounds or reasons for making the grant.

Let me call the attention of the Court to a case whose authority is perfectly conclusive to go behind your own decisions on this subject—the case of Davenport's heirs *vs.* The United States, reported in 15th Howard. It is precisely in point. I beg your honors to look at and decide whether it is possible to distinguish it from the case at bar in any view that can be taken of it.

Nobody has said, and I suppose nobody will say or think, that the restraint on alienation is a good objection to our title. In Fremont's case it was held that though the Mexican Government might have enforced it, the American Government neither would nor ought to do so.

We have, then, not a license, but a grant of the right to possess the land in question for our own use, and therefore a title; a grant made by the nation through the political chief of the Territory, clothed with legal power to dispose of the public lands; a grant with all the forms and after all the prerequisites of the law; under which grant we took and kept possession. I admit that we cannot ask for confirmation if our right expired by its own limitation, or if it has become forfeited by the breach of some condition annexed to it when it was made. But I submit to the Court that it is at this time a subsisting right, in as full force as ever, not expired, and not subject to re-entry by the grantor for condition broken.

There was a condition annexed to it. When the applicants presented their petition the alcalde said it did not belong to

any community or individual, and that was true. When the case was referred to the Secretary he also admitted that it was to all intents and purposes vacant and grantable land; but he suggested that it might, perhaps, be wanted for the church, and therefore recommended that a license be given to occupy it, with the provision that possession should be surrendered by the petitioners if it should hereafter be included within the *ejidos* of the establishment (that is the church) of San Francisco. The Governor overruled this recommendation in so far that he determined to make a grant of the title, and not give a mere license to occupy. But he adopted the recommendation so far as to insert into the grant the condition which Jimeno had proposed to couple with the license.

The reason for giving this shape to the grant is very plain. The Missions had never been vested with a title in the lands they occupied. In 1833 they were all abolished by what is called the decree of secularization. Jimeno says that this ex-Mission had no rights of property whatever. It was converted into a parish church by the same decree which declared it no longer a Mission. Upon this parish church Jimeno and Micheltoreno both thought it might be desirable to bestow lands for its support, and the decree authorized the laying out of a *campo santo* around it, to consist of lands for pasture and tillage, as well as for a vineyard, burial place, and garden. But these lands had not then been assigned, that is the *ejidos* of the church had not been measured. The condition put into the grant was that if the *ejidos*, when they came to be measured, should include the portrero, the grantees should give it up to the church. They took the grant on that condition. Is it broken? We shall see.

The ejidos of the church were never measured in Mexican times; but after the conquest the Legislature of California created the bishop of that diocese a corporation sole, and

vested in him the legal title to all lands properly belonging to the churches. Bishop Allemamy, as the trustee of the parish church of San Francisco, applied to the Land Commission for confirmation of the title. It was confirmed, and an appeal taken by the United States was dismissed. Under that decree a survey was made. *The ejidos of the ecclesiastical establishment of San Francisco were then measured, and this did not comprehend the portrero.* I submit, therefore, that our title cannot now be disturbed in consequence of anything contained in that condition.

But our title is strengthened by it. *Expressio unius exclusio est alterius.* When a title is given on one condition it is absolute in all other respects. If we are to hold until a certain contingency happens which never can happen, we are to hold forever. If our title is to endure until the measurement of the church lands takes in our lands, that is a perpetual estate as much as a title which shall last as long as grass grows and water runs.

It is to be carefully remembered that no other establishment, or community, or corporation of any kind, ecclesiastical or political, is proved by this record to have existed on the peninsula; and we repeat that none whatever was there except the church. In this state of things it is utterly impossible for the Court to assume that the condition can refer to anything but the ejidos of the church.

J. S. BLACK.

NOTE.—Annexed to this are some notes by Mr. Carey Jones, which the Judges will examine if they think the subject doubtful enough to need further investigation.

WM. M. STEWART.

ADDENDA I.

Comments of Wm. Carey Jones, wherein he shows, among other things, that it was the ejidos of the ex-mission, and not of the Pueblo of San Francisco, which were referred to by Jimino and Micheltorena.

Under the Mexican system public lands could be granted in California, although the whole territory was once under the jurisdiction of the missions.

"The objects of this law (decree of 1824) are those national lands which are neither private property nor belong to any corporation or pueblo, and can therefore be colonized."

What is meant by national lands is more clearly defined in the first section of the instructions of 1828, where it is said that *vacant* lands are to be colonized in pursuance of the decree of 1824. The seventeenth section of the instructions provides that mission lands shall not be colonized *at present*, nor until it be determined whether they are to be considered as the property of the establishments of the neophytes, catechumens, and Mexican colonists.

In 1834 the Mexican authorities commenced in earnest to colonize Upper California and to dispose of the lands, nearly all of which had previously been within the jurisdiction of the various mission establishments.

Decrees and regulations, emanating from both the national and territorial authorities, were from time to time promulgated, all having for their object the reduction of the mission establishments to parish churches and the distribution of the lands among the colonists under the new system. The Mexican authorities, however, in all cases were careful to avoid granting these mission lands to individuals while the missions had actual use for them either for their stock or for cultivation. As these missions were extinguished it was also the policy of the Government to establish on their ruins, at convenient localities, pueblos or civil local governments having general jurisdiction

over four leagues of country, with certain qualified rights of property for public purposes in the immediate vicinity of the town site or seat of local jurisdiction.

The public property of the town or pueblo consisted of the public square and streets, the building lots fronting on them, and the propios to be rented for public revenue, the suburbs or ejidos lying next to the pueblo, and a certain amount of land as suertes or sowing ground for each inhabitant. The public lands lying outside were commonly called the dehesas, or great cattle pasture.

There was also conferred upon these civil establishments called pueblos certain limited authority to grant house lots. The public squares and streets, the sowing grounds, and the ejidos were regarded as belonging to the pueblos, and whenever it could be shown that lands had been assigned to and were actually used by a pueblo for these purposes they were excluded from sale. Hence, we find in every instance of grants made in upper California an investigation to ascertain the following facts:

First. Was the person a colonist and entitled to the assignment of lands in severalty?

Second. Were the lands petitioned for public?

And these inquiries were answered by a report from the proper officers:

First, that the person possessed the qualification of a colonist.

Second, that there was no prior application for the land.

Third, that the land was not occupied by any community or private person.

Such a report excluded the possibility not only of private proprietorship but also of the rights of pueblos which had no claim until after assignment and during actual use and occupation; and it also excluded the claims of the missions which never amounted to a right of property but a mere right of occupation, while such establishments had stock or persons to occupy the land and did actually occupy it.

Upon the report of the proper officers of the facts conferring authority on the Governor to grant, a judicial decree was en-

tered by him awarding the property to the petitioner, and upon the faith of this decree the necessary papers were issued. We submit that the Governor's decree, founded upon these jurisdictional facts properly reported, is conclusive and binding, not only upon the Mexican Government, but also upon the United States, and establishes the right of the petitioners to receive a grant as therein awarded.

The expediente shows that the De Haros were colonists, and that the Potrero was vacant public land. The limitation or proviso is in favor of the ejidos of said establishment referring to the Ex-Mission. But, in the opinion of the district court, the "rights conceded" were to continue "only until an assignment of the land to the pueblo is effected." What the learned judge here intends to signify by the term "pueblo" is somewhat obscure, since the word does not occur either in the grant, the expediente, or any other paper or record connected with the title; nor are we much enlightened as to the meaning of the learned judge when he says:

"It must have been known to the Governor and Jimeno that the lands *must eventually fall within the four leagues* which was ordinarily assigned to pueblos as ejidos:"

—Unless, indeed, we are to infer that some such phenomenon as a change in the geographical position of the Potrero was anticipated. Even then, we are left to conjecture how "the Governor and Jimeno" should have been endowed with prescience of the occurrence and not taken better security against its happening. From the whole drift of the opinion, however, we suppose that the learned judge intended the word "pueblo" in the sense of and connection with the case of The City *vs.* The United States, then depending before his honor, and since decided by Mr. Justice Field of the circuit court. If so, the opinion is contradicted by the entire tenor of the documentary evidence; and if not so, it is impossible to conceive what is meant.

Another eminent authority, however, takes a like view with his honor, but arrives at a different, and we think a juster conclusion. We refer to the learned commentator (understood

to be General Halleck*) on the opinion of the supreme court of the State in the case of Hart *vs.* Burnett. He says, (Note 13, p. 445:)

"The provisional title in this case is undoubtedly genuine, but it was made subject to the measurement of the *ejidos of San Francisco*. . . . The Governor and Secretary were evidently aware of the existence of *this pueblo*, and its *right to lands*, but they *did not know* the exact boundaries of *the four square leagues*, and hence the condition was inserted, and the grant made provisional. *Perhaps this provisional grant, with occupation, constitute a good equitable claim for the land, and if so it ought to be confirmed.*"

We concur with the learned author in his conclusion, but we cannot, in face of the facts, think that the Governor and Secretary had any reference whatever to "this pueblo," or *its* "rights to land." Still less can we agree with him in imputing to the Governor and Secretary an entire ignorance of distances and localities around the harbor of San Francisco; an ignorance that would be only less remarkable than the extraordinary research into the occult purposes of nature with which the argument of his honor the district judge would accredit them. It is difficult to treat otherwise than with a degree of ridicule, arguments, come from whom they may, based on the supposition that Micheltorena and Jimeno did not know that any measurement whatever—square, circular, or prolonged—of four leagues of circumjacent lands to "this pueblo," would necessarily take within its compass both the Mission and Potrero; and that their action was in full view of that fact, whether that fact had any influence on their action or not. The counsel for the city in the pueblo case, has not found himself driven to any such affected, violent and absurd presumptions: nor have either of the high tribunals—the supreme court of the State and the United States circuit court—that have been successively called to pass directly upon the "pueblo question." The counsel for the city in referring

* Decisions of the supreme court of the State of California, in the case of Hart *vs.* Burnet *et al.* Halliday *vs.* Frisbie. By a Member of the California Bar. San Francisco, 1860.

to the Potrero expediente, says, with a frankness that we are glad to accord as a general characteristic of his able and valuable treatise*, that it has "little to do" with the pueblo case, except to show that whatever reservation the grant contains was with reference to the *Mission establishment*, or the possible subsequent erection of "an *Indian pueblo* out of the ruins of the mission." Mr. Dwinelle's ideas of the reservation intended in what is denominated the "provisional" clause of this title, are at least clear and argumentative, though we do not conceive them to be entirely right. We think that he errs in supposing that it was in favor of some "Indian pueblo" yet possibly to be evoked from the Mission; but he is certainly right in ascribing the reservation, whatever its nature, exclusively to the locality of the Mission and in behalf of that establishment. If he is correct in supposing that any "pueblo question" was connected with the thought which suggested the denomination "provisional," then we should look for the interpretation of that clause to the application of "inhabitants," (not Indians) of the Mission Dolores to be "recognized as a pueblo," which was pending before the Governor at precisely the same date (the last days of April, 1844,) as the petition of the brothers de Haro for the Potrero, and which application is noticed on the succeeding page (p. 76) of his able argument, with this exact statement of the truth: "This one document effectually establishes the fact that the Mission Dolores was not *that* Pueblo of San Francisco which was established in 1835."

So the supreme court of the State in the leading case of Hart *vs.* Burnett wisely avoids the lame and impotent conclusion that would confound the establishment or ex-mission, or any pueblo—civilized, neophite, or mixed—that might be conjectured for its future state, with the pueblo proper, to whose land franchise the city claims the succession, (15 Cal. Rep., p. 530.) And a like discriminating judgment enlightens the

*"The Colonial History of the city of San Francisco: being a Synthetic Argument in the District and Circuit Courts of the United States for the Northern District of California, for four square leagues of land claimed by that city. By John W. Dwinelle, Counsellor and Advocate, (Second Edition.) San Francisco, 1865."

opinion of the circuit court, recently rendered by Mr. Justice Field, confirming the city claim.

We have hardly need, after these citations from the argument of the counsel for the city, to go further in the refutation of the idea with which the opinion of the learned judge of the district court colors the case, namely, that the ejidos of which the measurement was to be provided for were those of "this pueblo." But an error once planted in a judicial rendering is so susceptible of propagation and ramification that we think proper to dwell further on this point.

In the first place, it is evident that none of the parties to the transaction itself had a suspicion of any possible ulterior rights being involved other than in connection with the Mission. As before stated, the word "pueblo," either with respect to "This pueblo," or any other, does not occur in the whole course of proceedings from the petition to the *titulo;* nor anything to suggest the idea of a "pueblo" in a technical sense of the word. The De Haros, in those of the papers in which they are the actors, speak only of the ex-mission, evidently understanding it to be, not only a distinct locality, but a distinct organization, or "establishment." The elder De Haro is confident of not interfering, or rather so unconscious of any possibility of interfering with any "pueblo" rights, that his first step in advancing the interests of his sons is to communicate with the principal magistrate of the pueblo proper. Mr. Hinkley, being First Alcade, must be supposed, if any one, to have in view the rights and interests of the pueblo; but he shows himself as unconscious as the De Haros of any such rights or interests in the premises. He says in so many words that the place asked for has no other pretendants or claimants *up to that date;* though this pueblo, as has been judicially affirmed, had, *at that date,* been established, and its consequent territorial franchise accrued, for the space of fully nine years. He adds, moreover, that the place, besides having no other pretendants or claimants, was not occupied by any community or person whomsoever. We have already shown that the word "community" here may mean a pueblo holding property, as a corporation aggregate, in trust for its

individual members, or a community holding property in common under a trust, and that Mr. Hinkley's report covers both cases.

Mr. Hinckley was not a person lacking in intelligence. His acts show him to have understood both his duties and his powers. He had been a lot-holder since 1839, and as Alcalde, he was accustomed to make grants of town lots; a considerable portion of the valuable property of the city is now held through grants from him; the fees received by him in that way were the greater part of his perquisites of office. He certainly was not aware that the Pueblo, of which he was the first magistrate, and whose interests he was consequently bound to guard, had any concern in the matter then before him.

Did the higher luminaries who followed, exhibit any superior light? The learned judge of the district court says, that the Governor and Secretary "*must* have known" that the tract would "ultimately fall" within the "four leagues" of pueblo lands. Whatever they "must" have known of its ultimate destiny, it is certain that they did not know of any incumbrance, such as that would imply, *then* existing upon it. The Secretary adopts the representations of the petitioners, "accredited," as he says, by the proper magistrate; and informs the Governor that "*the Mission,*" being destitute of stock, "*therefore*" the tract is vacant. Why "therefore"? Because the Mission does not occupy it, and has nothing to occupy it with. What then? "*That* establishment"—the Mission, and no other—ought still to have its "ejidos," its goings out and its comings in, its egress and ingress, provided for. Nothing about the Pueblo, or a pueblo franchise, enters into his mind, or, at all events, not into his report. It was reserved for the acute perception of the district bench of the Northern District of California to discover what "must have been" in his knowledge apart from what is contained in his report.

Governor Micheltorena was equally unaware or oblivious of any pueblo interest to be conserved. He adopts the report of the Secretary, founded on that of the Alcalde, and con-

firmed, no doubt, by his own knowledge, and directs a "corresponding dispatch" to issue. The "corresponding dispatch" accordingly provides for the simple contingency of "ejidos," to be measured for the "establicimiento of San Francisco." The same "establishment" mentioned in the preceding papers, "in view of" which ("*vista*") the decree of concession was made.

"In view of the whole," to adopt the language of Micheltorena's decree, it requires a negation of fact to assert or imply any other organization than the Mission establishment to have been spoken of or intended in any part of this series of papers; and a peculiar flexibility of imagination to connect even such a negation of fact with any other pueblo interest than a possible one of the Mission. Nevertheless, there is a way (and we are glad to give the benefit of it to all concerned) to vindicate that mild development of the faculty of ratiocination, which would associate the supposed qualifying clause in this title with the Pueblo claim. The learned judge had read and heard, no doubt, of "pueblos" and "ejidos," and had known the two words connected together. Nothing more natural than that he should suppose them inseparable, and when he saw "ejidos" mentioned, concluded that a pueblo—"The Pueblo"—was somewhere in the background. In no other way can the repeated assumption by the learned judge of a matter, so completely *dehors* the record, and amounting in a certain sense to special pleading, be accounted for. The illiterate and unsophisticated natives of the country were not gifted with a like exclusiveness and refinement in association of ideas. *They* spoke of ejidos in reference to military posts and of Mission establishments and settlements, or "poblaciones" as well as pueblos. It must have been through these deteriorating associations that the better instructed Micheltorena and Jimeno fell into the same indiscriminate application of the word. But it may be pleaded for them, in extenuation, that even a man's house must have its ejido, exido, exitus, exit, egressus, egressio, egress—salida, sally-port—of some kind into some sort of neutral and privileged space, if we would not have it his prison instead of his castle.

No better idea can be given of the generic sense of the ejido than that here suggested; and, it may be added, that that generic sense is not lost sight of in the largest application of the word.*

If the learned judge, or any others who have sought to connect any clause of reservation in this title with the Pueblo claim as presented by the city, had taken the trouble to examine, they would have found these facts to comfront them:

1. That not in a single instance do the expedientes of lands granted or asked for out of those that were or had been appurtenant to the Mission, or in its occupation, show an objection to have been made to the grant on the ground of any existing or possibly contingent interest in "this Pueblo," or on the ground of any other interest than that of the Mission proper and its neophytes, or in case of *its* possible erection into a pueblo; and this, although the petitions for a grant were almost uniformly referred to and reported upon by the municipal authority. The missionary fathers—as long as they were in administration of the temporalities of the Missson—contested each several application as an encroachment on the establishment and the rights of its pupils, and so also in a less degree did the secular administrators who succeeded them. But from no quarter did any opposition come in behalf of "*the* Pueblo," or any pueblo.

2. That the municipal authorities of San Francisco, in granting lands *at the Mission*, did not so act *ex-officio*, but by virtue of a *special authority*, asked for and obtained. This application and order had been so often referred to and published in various forms, that it is surprising they should have escaped attention or memory in the decision of the case. The original of the documents is in the archives, and translations of them

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*In the standard "Spanish and English Dictionary"—Soane's Barrett and Meuman, by Velasquez: Appleton & Co., New York, 1860, the word "Ejido" is translated, "a public enclosed piece of land"—being as nearly as possible what an ejido is not. This is but another example of the mistakes one is liable to inconsulting other than original authorities.

are contained in many transcripts and briefs before the State and Federal tribunals. (See Dwinelle's Colonial History, p. 66, § 99: Adda. XLII. p. 61.) The documents are important and interesting in so many points of view, that we here give them entire:

NOTE OF THE PERFECT TO THE GOVERNOR.

"Most Excellent Senor: The residents of the municipality of San Francisco have made to me a number of verbal representations through the justice of the peace, to the end that by this prefecture they may receive from the Government the necessary license to enable them to settle in the Establishment of Dolores, at which place they desire to unite in order to form a settlement. This project is of public utility, by which the inhabitants will be benefited, and the administration in all of its branches may be carried on with greater efficacy and better result. All find themselves now scattered, and this condition of society is not the most convenient in the present age, in which civilization is one of the objects which call particularly the attention of the Departmental Government.

"Wherefore, I address myself to your Excellency, praying you to have the goodness to make provision in favor of the neighborhood which is represented through me, granting it the lots which it needs in said Establishment for the building of its residences. (Signed) JOSE CASTRO."

THE GOVERNOR'S REPORT.

"1st. The justice of the peace of San Francisco is empowered to concede house lots in the Establishment of Dolores, to the extent of fifty varas or less, in accordance with the possible means of the petitioners.

"2d. Those residents may establish their stock in thelands surrounding the edifice, and maintain them in community as settlers, leaving free the tract of San Mateo and the coast; the first, because that, in due season, the Indians may establish themselves in it; and the second, because there subsist the only stock which remains.

"3d. They shall not in any manner interfere with the functions of the administrator and Indians whilst this community subsists."

3. That neither under that special authorization or at any time subsequent to the installation of the Ayuntamiento of San Francisco, prior to the American conquest, was there a grant of lot, *solar* or *suerte*, south of Mission Creek, made by any municipal or other officer of this vicinage, in which the premises were not named as of "Dolores," or of the "Mission," or "ex-Mission," or "Pueblo of Dolores," or equivalent expression, to denote it as a distinct community and organization, as well as a distinct locality. (See Halleck's Notes and

Comments, above cited; Dwinelle, Adda. xxviii, p. 113. Also, Wheeler's Compendium,* Schedule A.)

4. That coincident with the grant to the brothers De Haro there was pending before the Governor an application of the "*vecinos*" (not Indians or neophytes) "of the jurisdiction of San Francisco de Assis, *radicados in the ex-Mission* of that name," asking that the population of that locality be relieved of the name and character of "a Mission," and known as a "Pueblo;" and that the same was responded to by the Governor on the same day (30th of April, 1844) with his decree of concession ("*vista*") in the De Haro case, without either the petition of the "*vecinos*" (to which De Haro, senior, was the first signer) or the response of the Governor making any reference to pueblo rights already existing, or manifesting the slightest consciousness that the Potrero claim had relation to any pueblo franchise *in esse* or *in posse*, or that either the one or the other petitions had any bearing upon other interests than those of the Mission establishment and the petitioners themselves.

The following are the proceedings of the ex-mission.

"MOST EXCELLENT SIR: The undersigned, all residents (vecinos) of the jurisdiction of San Francisco de Assis, and established in the Ex-Mission of this name, before your excellency, respectfully and in due form, represent, that all of us being desirous to do all that we can for the increase and advancement of this settlement, (poblacion;) also, to promote the branches of industry, agriculture, and commerce as far as it is in our power. Up to the present time, in spite of the data which proved the contrary, this place is still hitherto commonly recognized as a mission, (see reconoce aun y corre por Mision,) and notwithstanding the data to which we refer, which show that it ought to be held and recognized as a *Pueblo*, such as the bando issued by his Excellency the Governor D. Juan B. Alborado, on the 27th of February, 1839, in which this establishment was named

* "Land Titles in San Francisco, and the Laws affecting the same, with a Synopsis of all Grants and Sales of Lands within the Limits claimed by the City. By ALFRED WHEELER. San Francisco, 1852.

as a "Cabecera de partido," (seat of the partido government,) that the one issued by your excellency on the 25th of April, 1843, in which this was excepted in the order to return the Missions to the fathers; and lastly, according to that of the 28th of September, of the same year, issued also by your excellency, the second article of which required first and second Alcaldes to be appointed for the place, among the others which your excellency thought proper to distinguish with this honorable designation. Wherefore, in consideration of said data, for the extinction of such title of mission, as well as that the same be recognized *in future* as a *Pueblo*, and in order to avoid controversies, that the office of mayordoma which exists, although with a small number of Indians of both sexes in *community* (en communidad;) also, that by the authorities a proper impulse may be given, and a due observance of the decrees and regulations of police (policia) and good government; and, finally, in order that the public may be undeceived in relation to the title that it now has, and that the difficulties and obstacles that have embarrassed the settlement and prosperity of the said settlement (poblacion) may in the future be avoided: Wherefore we apply to the ample powers of your excellency, in order that in the use of the same, and in consideration of what has been set forth, you may be pleased to declare in due form the same to be a *Pueblo*, and in consequence of its being such, by your superior approbation, permit us to ratify the same, which act will be duly solemnized in accordance with our authorities, making due acknowledgments to your excellency for this favor. Wherefore we earnestly pray you to look propitiously upon our petition, (solicitud,) and to admit this on common paper, there being no sealed-paper in this place. S. Francisco de Assis, April 8th, 1844, Francisco de Haro, T. del la C. Sanchez, Francisco Guerrero, Fran'co Sanchez, F. de Jesus Noe, Manuel Sanchez, Cand'llo Valencia, Ramon de Haro, Jose Jesus, Bisente Miramontes, Fran'co M. Haro, Ysdro T. Sanchez, Felip Soto, Domingo Felis, Jose Bernal.

[Something obscure here.]

Let the Secretary of State report, first giving the matter due consideration. MICHELTORENA.

The preceding paper subscribed by some citizens, (*algunos vecinos,*) of San Francisco. I understand that it is not of such urgency as to require you to determine the matter until you have the condition in which the Mission is, which is indebted to some merchants, and these have asked that the same be satisfied with some of the property of the Mission. Therefore, your excellency can determine what is proper as soon as you make the visit that you have resolved upon.

MONTEREY, 29th April, 1844.

MONTEREY, April 30, 1844.

In accordance with the opinion of the Secretary of State, and as the Governor has determined, let it be known to the gentlemen who subscribe, assuring them that the Government can never desire anything but their welfare, consistently with the general good, (*publico general,*) which it is his duty to promote. (Dwinelle, p. 76, MS. Archives.) MICHELTORENA.*

If the learned judge of the district court, or any other authority, imagines it to have been to the interest of "the pueblo claim" to ignore the foregoing facts, or to suppose for them other than their true significance, the enlightened counsel who represented the city in that behalf failed to make the discovery. We have already cited his declaration, that "the

* This document has been supposed, rather hastily we think, to argue that the Mission "had not then been secularized." The Mission was secularized when the missionary fathers were "relieved" (to use the words of the act) of its temporalities, and they turned over to secular administration. But it had not been municipalized, if that word may be used; and it was to enlarge their political status in that respect, and relieve them as a community from subordination to, or contentions with the stewardship ("mayordomia") that attached to the Mission, as such, that the "vecinos" petitioned: the nature and reason of which desire will be well understood by recurring to the last clause of the Governmental order, (ante p. 10) authorizing the grant of lots at the Mission, namely, that the grantees shall not, "in anything, interfere with the functions of the Administrator and the Indians, while they remained in community." The petition certainly had no reference to, or contemplation of, a territorial franchise, to be granted or preserved. Moreover, the only objection suggested to the granting of the prayer of the petition, according to its terms, was that the Mission had outstanding debts, to be liquidated before its final extinction in that capacity.

single document" last alluded to—the application of the "*vecinos*" of the Mission for relief from mission supervision—effectually establishes the fact that the Mission Dolores was "not *that* Pueblo of San Francisco which was established in 1835, and which was so often recognized by the Governor and Departmental Legislature." (Dwinelle, p. 76.) We conclude this branch of our subject with further extracts from the same enlightened and careful authority:

1. "September, 1835. Don Lorenzo Quijas, the missionary monk at the Mission Dolores, petitioned to have *ejidos* assigned for that mission; but this petition was rejected by the Departmental Junta. *It thus appears that the Pueblo of San Francisco and the Mission of Dolores were not, at that date, confounded with each other.*" (Dwinelle, p. 54, § 78.)

2. "From this *espediente*, (Galindo's, for Laguna de la Merced,) several important facts appear: First, that although the term San Francisco was often applied to the Mission of Dolores, because it was the Mission 'de los Dolores de San Francisco de Assis,' *yet, when official acts or proprietary rights were concerned, the two were kept perfectly distinct.*" Secondly, that there was, at that early date, an Ayuntamiento of San Francisco. Thirdly, that although there was, at that early date, a 'Pueblo of San Francisco,' yet that this pueblo was not at 'the Mission Dolores.'" *Ibid*, p. 57, § 82.

3. Referring to de Haro's Expediente for Rancho of San Pedro: "Although there was *a Pueblo of San Francisco*, with an Ayuntamiento, Alcalde, and Rejidores, there was no *pueblo at the Mission Dolores.*" *Ibid.*, p. 61., § 88.

4. "In January, 1839, Governor Alvarado promulgated certain regulations respecting missions. These regulations were followed by others promulgated in March, of the same year. All these regulations contemplate the secularization of the missions as a thing still to be accomplished, whereas, I have shewn that the *Pueblo of San Francisco was already in existence.*" *Ibid.*, p. 64, § 93.

5. "On April 20, 1839, de Haro, justice of the peace, represents to the Governor that a house lot (*solar*) had been petitioned for by one Gomez. He dates from the establishment of Dolores; while he calls it an ex-mission, he pleads that it has 'a character of pueblo,' because it had been named the head of the Partido. *From this document it is evident that the Indian village of Dolores was not that Pueblo of San Francisco which*

we have seen had already been in existence for four years." *Ibid.*, p. 66, § 98.

6. "From these documents it is evident, first, that the municipality of San Francisco was *perfectly distinct from the establishment of Dolores;* secondly, that although house lots had been granted for years in *the pueblo of San Francisco*, yet that *down to November* 3, 1839, *no building lots had been granted at the establishment of Dolores.*" *Ibid*, p. 67, § 99.

We have thus, as we think, demonstrated beyond possible question that whatever the nature or effect of what is held by the learned judge to be especially the qualifying clause in the de Haro title, it had reference to the Mission establishment, and that only. Hence, we proceed to examine what was, in fact, the intended operation of that clause.

It has been assumed (*ante*, p.) that the condition was not intended to refer to the title itself, that *that* was positive, but to the *limits* of the tract embraced in it, that is, it was made subject, in respect of its boundaries, to other limits yet to be designated. Nothing is more common in California grants than a like provision, that is, that the grantee shall "subject himself to the measurement," of surrounding or coterminous tracts. In fact it is a necessity where grants are made of unsurveyed lands and in the absence of surveyors. It is a necessity of the case that the younger shall be subjected to the elder right, and the law would so determine whether the express reservation were made or not. That is the sense of the provisional character attributed to the Potrero title. Its limits were subjected to the measurement of ejidos for the Mission, if ever their extent should be determined. We expect to show not only this, but also that the extent and description of these ejidos have been since then judicially ascertained and found not to interfere in any degree with the tract claimed by the brothers de Haro. We shall examine these points separately:

[A] The first of these propositions is so evident, from the reading of the title itself, that it is difficult to understand how another interpretation to it has been given or attempted. Its exact words are, "Subjecting themselves (they, the grantees,)

to the measurement to be made of the ejidos of the establishment of San Francisco—('Sujetandase a *la medicion* que se haga de los ejidos *del establicimiento* de San Francisco.')"

"MEASUREMENT TO BE MADE."

Can words be simpler or clearer than these? There is not here even the verb "*señalar*" to fall back upon and interpret "*to assign.*" The secretary suggests that the ejidos are to be "*señalado,*" but the Governor, in this last act—the instrument delivered to the grantees for their *resguardo* (safe-guard)—uses the word *medicion*, which "the utmost ingenuity" (to quote with all deference the words of the learned judge in reference to counsel) of bench or bar cannot interpret into anything else than MEASUREMENT.

If the word *assigned*, or any equivalent to it, had been used, then it is admitted that "ingenuity" might have found material for an argument that the whole extract was in question and subject to that proposed assignment or ex-propriation. But even in that, we venture to say, that with a modicum of common sense not amounting to "ingenuity," it could have been successfully replied, that as long as that ex-propriation had not been made, or in so far as it was not made, the original right would remain; and when such ex-propriation, in the course of events, by change of condition and circumstance had become impossible, the supposed possible incumbrance would be lifted and the right eased of the contingency. These are plain propositions of law and inductions of reason; but not necessary further to be argued here, since the facts on which we are arguing do not call for their exposition. It is not a possible adverse "assignment" that the title is conditioned against, but a possible limitation of boundaries by a survey yet to be made of a thing already assigned. The language of the condition proves this. It is not to "measurement of *ejidos*," simply, (much less assignment of them,) that the parties are subjected, but to "the *ejidos*," (*los ejidos*,) and these words imply not a thing to be assigned, but something already assigned, or supposed to exist, but not precisely defined. That was the fact undoubtedly with regard to the *ejidos* of the Mission establishment; for *ejidos* had existed to

it ever since its foundation in 1776. They were known and recognized, but never defined; because the extent of them depended upon conditions that were subject to mutations—a kind of sliding scale—and were in fact constantly changing. They were at one time very large, because the establishment had need of and had put to use an extended territory; they were gradually reduced by non-necessity and non-use, being the scale by which their extent was measured, or rather allowed, until now, when the means of occupation and consequent wants of the establishment were brought nearly to a minimum, they were to be determined anew and in a different aspect. They were truly brought nearly to a minimum; but they were not extinguished, nor the equity lost to so much as was requisite to the existence of the establishment in its restricted and altered condition. How much, or to what extent that might be, was to be ascertained—ascertained, as the learned counsel for the city in the Pueblo case would say, "by inquest of office;" at all events by examination and consideration of the case as it should present itself when the examination came to be made.

As a missionary establishment, an "inquest," in another sense than that of the counsel for the city had already been held upon it. In that character it was deceased—*functus officio;* its destiny fulfilled, if not its purpose accomplished. It was an ex-mission, as it is properly designated in these papers.

But though the establishment was dead as a mission; though the particular agency for which its organization had been intended was exhausted, it was still a living entity. It survived as a religious institution for the ministration of divine worship, and the culture of the faith to which it had been originally dedicated; and it was entitled in this its parochial quality, as it had been in the plenitude of its missionary temporalities to a local habitation and a name—to light and air—and, moreover, to space and circumference commensurate with its now more circumscribed uses. It was entitled to all these, but their extent had not been defined nor their limits ascertained. As a church establishment, as an ex-mission, it did not need the extensive pastures or grain fields which, as a mis-

sion, with its thousands of Indian pupils and corresponding herds and flocks it had need of and could put to use, and was consequently allowed by the policy of the Government to occupy. It had now neither herds or flocks, nor yet neophytes to till the ground.

The principle that lands that had been appurtenant to missions or *doctrinas*—establishments for the propagation of the faith—their *ejidos*, in the broad sense of the term, were open to other uses and invited other uses, as they became either unnecessary or disused—the purposes to which alone a missionary or neophyte servitude upon them was allowed—was not only according to the Spanish and Mexican law, and the constant practice of the granting authorities, and an elementary condition of the establishments, but was fully recognized and practically made use of by the reverend missionaries themselves.

This is shown in various acts, and particularly in applications of priests of the missions for grants out of the mission lands to be made to the church or its ministers for ecclesiastical purposes. There are three claims of this class among those presented before the land commissioners in behalf of the Catholic church by the bishop of this diocese, and finally confirmed and patented to the Most Reverend Archbishop Alemany, as corporation sole, in trust for that church. These grants are not of those parts of the mission appurtenances that have been called (and as were made by the act of secularization,) distinctively "church property"—that is, the parts devoted to clerical, monastic, and consecrated, as contradistinguished from missionary uses—those were claimed and the claims confirmed, on an entirely different basis; but of lands outside the environs of the establishments, and used for agriculture or pasturage by the neophytes—the mission temporalities proper; using the word mission in its appropriate sense of an enterprise to induct heathen barbarians into the fold of religion and civilization.

One of these cases, at least, of which case the expediente exists in the archives, carries the principle much farther than we have stated it. The reverend fathers who petitioned for

lands to endow a seminary for this then newly erected episcopate, did not wait for the tracts solicited to fall vacant, or the mission uses of it to have ceased. They petition for a grant of four fertile valleys, comprising six leagues (afterwards increased to eight) of the lands of the Mission of Santa Ynez, stating in their petition distinctly that the lands are in the occupation of the mission, and recognizing the fact that for that reason the equities of the neophytes upon them remained in force. "But," they continue, "on consultation with the neophytes," these latter express a willingness that the lands may also be occupied for the college uses so far as not to interfere with their (the neophytes') interests. What the reverend fathers ask, therefore, is, that the Government ratify that consent of the neophytes, so that the desired endowment may obtain at once the right *ad rem*, pending such time as the lands shall be "declared vacant," and thus the right *in re* and "propriedad absoluta" accrue. This was taking time by the forelock certainly. But the governor did not discover anything illegal or unusual or contrary to the right of the case. He promptly made the grant, in more complete terms than the petition, and the United States tribunals and ministerial officers, when it came before them, as promptly confirmed it, and carried it through all the forms of our law to the ultimate patent.

The brothers de Haro were not learned and astute men like the members of the Franciscan brotherhood; or perhaps they doubted if such a forecast of coming events would be recognized as competent to the horoscope of simple laymen. They waited, consequently, till the tract they desired actually became vacant, and relieved of any equity in the mission or its neophytes. That delay was according to the custom of the country and clearly according to law, and, unless in urgent cases, like that of the proposed diocesan college, more according to propriety. Nevertheless, the brothers de Haro were not dilatory. After the vacancy of the tract became a recognized fact, and the land consequently subject to entry, they were the *first pretendants*, and consequently the first to acquire that right *ad rem* which the fathers, in their pious zeal for an ecclesiastical and

scholastic endowment, thought of sufficient consequence to procure in advance; a zeal that would almost savor of administration on the estate of a patient that still lived, and not yet, as respected the particular locality of Santa Ynez, in *articulo mortis*. The reverend fathers assumed as a legal proposition, that an assent of their Indian neophytes, coupled with a ratification of that assent by the governor, to their "occupation" of the land would confer a right *ad rem*, which would ripen of itself on a "declaration" of vacancy—that is, non-use by the neophytes, or as actual temporalities of the mission—into the right *in re*, or "absolute property." We assert as a much clearer legal proposition, that the brothers De Haro in becoming pre-claimants, or pretendants, to the Potrero, already vacant, and relieved of the previous equity of the neophytes or temporalities of the mission, acquired a right *ad rem*, which of itself and by force of law ripened into a right *in re* the moment that their pre-claim or pretension was "conceded," "licensed," or in any way legally sanctioned. So that, whether their grant was *sub mado* as to its whole extent, as urged by the learned judge of the District Court, or only as to its territorial superficies, their right *ad rem* became positive on their lawful permission "to occupy," and their right *in re* became equally positive when the qualification was removed by fulfillment of its conditions or impossibility of their enactment.

Further reading of the title confirms these views. Th parties change character; from being *pretendientes* they becom[e] "*interseados*."

"INTERESADOS" *in what?* Surely something valuable and real; the word itself implies that. Moreover, something valuable and real, because it *imposes obligations*, by non-fulfillment of which the "*interesados*" (we prefer to use the original word where its etymology and orthography carry its meaning on its face) are liable to lose a "right." This is the plain language of the instrument, and cannot be gainsaid nor its legal effect be denied, namely, that when a right is coupled with corresponding obligations, it is only by neglect or violation of the latter that the former can be defeated.

The conditions in this case are negative and positive. The

"*interesados*" shall *not* obstruct the right of way, the high roads or customary servitudes, and they *shall* appropriate the tract to the uses they had proposed, and they *must* occupy it "within a year at the most." Now it is not possible rationally to associate the imposition of such conditions as these with the idea of a right liable at any moment to be absolutely blotted out, in absence of any fault or *laches* of the parties interested, and without even their privity. Yet, according to the opinion of the learned judge of the district court, we are required to suppose not only that, but that it was a right which the grantor and his adviser and assistant "*must have known*" would be speedily extinguished, perhaps even within the year in which the *interesados* "*must*" complete their arrangements for the occupation of the land. There is nothing in the law, nothing in the circumstances of the case, and certainly nothing in the instrument to justify any such preposterous supposition; nor is there anything in the characters of either of the two officers implicated—Micheltorena and Jimeno—to warrant us in supposing them capable of such a bitter mockery.

The name of the place indicates its appropriate use; a "*potrero*," in its American provincial sense, and especially as used in California, signifying an enclosed place for domesticated or breed stock, whether horses or bovine. The potrero, which is the subject of this suit, is precisely adapted for that purpose, and had been so used by the Mission, until now, when the Mission had no longer stock to pasture, either wild or tame, the potrero walls had fallen down and the place gone to decay. It was to that use that the brothers De Haro proposed, in conformity to the ruling policy of the Government, to restore it. When their proposal was accepted by the Government it became a contract, one of the conditions of which was that it should be carried into effect within a year. Now that was an *onerous condition*, in the positive even more than in the legal sense, as will be agreed where anything is known of the labor, expense, difficulties, and exposure to bodily danger attending the collection of wild cattle out of the recesses of the mountains and the dense chapparal and undergrowth where they

make their lairs, and reducing them to a sufficient degree of docility to be herded in a confined space. But these expenses were to be incurred, and this labor and exposure undertaken on the part of the young de Haros, by requirement of the Government, in order to secure a right, which, after all, according to the opinion of the learned judge of the district court, was no right at all, and could not be secured, and for which the instrument delivered to the parties "for their security" was no security whatever. To state this proposition is to condemn it. To argue it affirmatively would be to stultify the human understanding. Yet it is precisely on that proposition that the entire opposition to a confirmation of this claim rests.

No: it is not entirely on that proposition. In the judgment of the district court, the grantees ought not only to have performed the conditions stipulated, and which they did faithfully perform, but several other things that were not stipulated, nor in accordance with the policy of the grant. The learned judge thinks that they ought to have *tilled the ground.* That was not only not stipulated for or required, but would have been inconsistent with the real purposes of the grant. It is mortifying to have in such a connection to explain away misapprehensions of simple words. The words "*el cultivo,*" as used in the second condition of the grant, do not mean cultivation in the sense of tillage; the definite article used and the context ought to show to the shallowest understanding the sense in which they are employed; they refer back to the petition, and demand of the grantees that they shall appropriate the land to THE "cultivo"—the particular branch of industry—and THE "bienes"—the particular description of stock—they had *proposed* to introduce into it, and of which *proposal* this "condition" is an *acceptance.* The learned judge thinks furthermore that they ought to have *built a house* on the tract. But neither was this a requirement of the grant—a quite sufficient reason for which is stated in his opinion by the learned judge himself, namely, that the grantees already lived so near by that they did not need to erect a new residence. (Rec., p. 187.) The reason that operated on the mind of the grantor is most likely to be found in the letter of Castro (Prefect) to

the Governor, (ante, original and translation, p. 10;) namely, in the policy of aggregating a settlement of that race known as *gente re razon*, or civilized, in the "redodores" or immediate surroundings of the Mission.

At all events, whether the opinion of the learned judge be correct, that the transaction was *nudem pactum* on the part of the grantor, it is certain that the grantees fulfilled all that they proposed and all that was stipulated for them.

[B] The grant being made, in respect of its limits, "subject" to a subsequent proposed "measurement of the *ejidos* of the establishment of San Francisco," it becomes necessary, in further examination of that clause of the grant, to endeavor to clear away the confusion that has arisen in regard to the meaning and application of the word "ejidos," and especially to correct the mistaken understanding and application of it that this title has been subject to.

As already stated, [ante p. 9 note,] the word is defined in the standard "Spanish and English dictionary" as a "public enclosed place"—being, as nearly as may be, what an ejido *is not*. In the transcript in the present case it is translated "corporation or common lands," which, also, is a misapprehension; akin to another misapprehension in the same connection, namely, of the term "potrero." This the translator in the record renders "*the* pasture land," whereas, as before shown, it signifies in the language of the country an enclosed place for domesticated and brood stock, as contradistinguished from pasture lands, commonly so called. These mistakes do not always arise from sheer ignorance of the language, but rather from want of knowledge of the subject-matter; non-acquaintance with the provincialisms of the country, and the customs and peculiarities of condition which gave rise to them; from consulting superficial sources, and from relying on hasty first impressions. Trivial as they seem, and hence distasteful as it is to bring one's mind to the task of correcting them, they are capable of infinite mischief. The present case is an exemplification, of which the claimants have had painful experience; since an erroneous idea of the signification and uses

of the word "ejidos" colors the entire opinion of the district court, and may be said to constitute the thread of his argument. At least, it is the only line of continuity that we have been able to trace through it. It was an error apt enough to be taken up in a half-informed and unreflective way; and as long as it was confined to the crude deductions of that class of minds, could be safely passed over with a simple dissent; but when drawn thence, and brought into judicial recognition, and thus made powerful for harm, the manner of treating it demands attention.

The former orthography of the word "ejido" (and still retained in many parts of the Spanish world) was *exido*, corresponding with its Latin equivalent or derivation, *exitus*. In Spanish lexicography, whether of the language or of law, the first definition of the word is *salida*, that is, a place of *exit*, or going forth. A *salida*, or way of exit, presupposes a space to be entered upon, that is, an outer part as well as an outlet. That exterior constitutes, in fact, the exitus, exido, or ejido. It implies, not only a confined place to go from, but a free space to go to, each commensurate to the object, that is, commensurate with the character and uses of the establishment to which the "liberty" or ejido pertains. Even prisons have theis ejidos; as the old phrase, "prison bounds," familiar when laws allowing imprisonment for debt were in vogue, exactly denotes. This generic sense of the word governs its signification in all its various uses and applications. In its comprehensive sense it has not any exact synonym in English, that is, there is no English word that represents it in all its phases; but to represent each different application, a corresponding English designation may readily be found. In military science it is the "sally-port." As respects towns and cities its first application was (we say *was*, for practically that application has ceased) to untilled grounds directly outside the walls or intrenchments: *terra inculta oppido proxima;* French, *faubourg*, formerly spelled *fors-bourg;* low Latin, *frois-burgium;* German, *vorburg;* Portuguese, *barrois d'extra-muros;* Spanish, *burgo-suburbios de aribaldes—suburbios extra-muros.* Thus, in Latin, and in all the languages of Continental Eu-

rope, signifying what in English would be called outside dependencies—liberties beyond the walls, or other defenses that enclosed the nucleus of population and power.

As respects the cities of Europe, the ejidos, or faubourgs have come largely to exceed their originals, which latter, under whatever name, were, in the origin of the system, little else than *citadels*. Even London has yet its particular restricted district, known as "the City;" though London, in its present growth, includes other ancient towns and establishments—for example, the City of Westminster and Westminster Abbey, each of which had, in their day, its appropriate and commensurate "liberties," or "ejidos." In like manner, to bring the argument to immediate point, the present city of San Francisco includes several places and establishments which, in their day, had their appropriate "ejidos" or "liberties;" retaining them still, so far as the establishments are in existence and ejidos are needed to them.

The *Presidio*, while it retained that character, had very considerable ejidos. It was not simply a military post, for the defense of the harbor and vicinage, but a camp in an enemy's country, whence the soldiers of the crown went forth to subdue and conquer, as adjuncts to the missionary fathers, who came to convert and civilize. The military force necessarily consisted in large part of cavalry, and in a region where agriculture as yet was not, the horses of the garrison were dependent upon open pasturage, with detachments of the soldiery to care for them. Hence, the Presidio claimed and possessed large ejidos. Now that, under a different order of institutions, it exists as a national military post, in the midst of a peaceable community with no purpose but to maintain the Government authority and protect the community against possible assault from without, the Presidio has still, if not those extensive ejidos that it required in its pioneer and expeditionary capacity, yet its appropriate privileged circumference; only, instead of "ejido," it is a "government reservation" for the particular use.

So also *the Mission*, when it existed as such, had, as we have before shown, its extensive and varied ejidos, appurtenances

or dependencies. By change of circumstances and condition it ceased from its estate as an establishment for the diffusion of the faith in a missionary or expeditionary sense. Ceasing from its existence in that character it was resuscitated by the spirit of the law in which it had its rise in the character of a parochial establishment—in the same manner and in the same order of events as the Presidio (its co-worker in the policy of the Government) subsided from its position as a *point d'appui* of physical conquest and dominion; and, for the like cause, ceased to have need of extended ejidos.

It will thus be seen that we apply the word "ejidos" in a large sense. In that sense, its best English translation is "liberties" or dependencies. In the breaking up of the liberties or dependencies of the walled cities or baronial castles of the middle ages, and their conversion into burgs, the primitive idea of accommodation to social wants was not lost sight of. The allotments to private dominion were on a more liberal scale than the contracted limits of the walls would allow; streets and avenues, which are the real and only inalienable public ejidos, were broader and more systematically laid out; places were reserved for parks, gardens, lawns, promenades, fairs, or open markets, and public festivities; that is, to *remain* ejidos, or places of common resort. Some principal cities, in this transformation, were provident enough, or fortunate enough, to hold still to public use some noble remains in compact compass of their ancient liberties or ejidos. Not to multiply instances, and to adhere to such as are familiar, the great "liberty" of London, *Hyde Park*, was included in the ancient "liberties of Westminster city," as it is now in those of London; and it is not less now, than in its original, an exit or ejido, because surrounded by population instead of being at its exterior; rather the more so from the increased multitudes that make it their diurnal *suburbanum ambulacrum*. It has not often happened that such good fortune came to a city either by accident or design; but it has happened to a modern city to have adjudicated to it ejidos, out of which it may double, triple, or quadruple the area of Hyde Park without trenching on its powers of indefinite and healthful expansion.

On so grand a scale as this have the ejidos of SAN FRANCISCO been adjudicated, without occasion, even in the maintenance of such a domain, to call in question any prior title or equity.

The counsel for the city in the pueblo case ("Dwinelle's Colonial History," &c., pp. 10 and 11,) draws a critical distinction—in the main correct—between "ejidos," "dehesas," and other classes of pueblo appurtenances, known to the Spanish law. But these distinctions are purely artificial and arbitrary, and belong to an artificial and complicated system peculiar to Spain—never successfully introduced into America, unless among the very earliest Spanish conquests, when everything was attempted to be modeled after the fashion of the mother country. It was instinctively resisted by the pobladores of California from the very beginning, as were all permanent extensive reservations of lands to towns or communities of any sort; and especially after independence, all permanent withdrawals of lands from commerce was resisted, and, in the main, successfully. The governors, and after them the prefects, and through them officers of lower grade, went forward in the "*repartiamiento*" or distribution of lands into private ownership, without regard to conventional or even assigned limits of either pueblo, mission, or presidio. It was only a question of use or non-use, not of propinquity. Whether, in all respects, they had their warrant in positive law, is hardly worth while to inquire. The determination of the authorities and the people to prevent the engrafting here of any agrarian system, akin to that which had been so long the bane of the land of their origin, made a law unto itself strong enough to break up effectually the intended and attempted mission (or rather monastic) territorial monopoly, and to prevent, whether under pretense of pueblo rights, or the pretenses of right in any sort of corporation, the withdrawal of a considerable portion of the domain from common traffic—that is, its inalienable appropriation; its appropriation is *mortmain*, or "*manos muertos.*"

No doubt that the reservation of a belt of *terra inculta* immediately outside the walls, *inalienably* dedicated to the common use of the inhabitants inside, was the theory of such

foundations. But, in point of fact, those suburbs or ejidos never were continually *vacant*, never were entirely commons, nor in any case (at least outside of Spain) remained permanently *inalienable*. The belt of *terra inculta* was moreover transversed by roads, highways; and these have laws of their own. They are not commons of a particular corporation, but of the realm—the *king's* highway—*el camino real*—or rather of all the world that has traffic over them. On those roads hostelries necessarily arose, and with their surroundings became permanent encroachments on the supposed inalienable belt of *terra inculta*. By the law of expansion a superfluent population overflowed city confines, and by the law of necessity city "ejidos" were made available to the new uses demanded of them. Hence, in modern times, city, town, or pueblo ejidos, cannot be interpreted "*vacant suburbs*" but rather places for public use and divertisement reserved out of the former belt of *terra inculta* or original *municipal ejidos*. In exact proportion as they were reduced to private estate, whether by law or by acquiescence, they ceased to be *ejidos*—that is, *public* ejidos.

Thus it will be seen, that while in its primitive sense, the word is descriptive of every variety and manner of exit or egress, it comprehensively embraces, with reference to settlements or *poblaciones*, and towns and cities of whatever character or degree, and all institutions and establishments of a public nature, whatever may come under the denominations of *liberties, privileges or dependencies*.

In California, the word was applied in its largest sense, as well as its most confined, and used with reference to every species of institution known to its then condition. We give sufficient examples to illustrate the manner of its use.

As Respects PUEBLOS.

[Extract from Proceedings in the Territorial Junta, 28th July, 1830.]

"It was then moved that on the same terms as the foregoing [jurisdictional] assignment, one should be made of the land assigned for *Ejidos* of Monterey, and ordered to be placed in the following terms: From the mouth of the river of Monterey to the tract of Pilarcitos—reputed distance six leagues; from the Pilarcitos to Laguna Seca, two leagues and a half;

from the said Laguna to Point Cypress, five leagues; and from Cypress, along the coast to the mouth of the river of Monterey, ten leagues."

As Respects MISSIONS.

[Extract from California Archives, Legislative Records, Vol. II, pp. 247–250.]

"September, 1835, Don Lorenzo Quijas, the missionary monk at the Mission of Dolores, petitioned to have *ejidos* assigned for that mission; but this petition was rejected by the Departmental Junta." *Ibid*, pp. 600, 282. *Dwinelle*, p. 54, sec. 78.

As Respects PRESIDIOS.

[Extract from Expediente of Benito Dias, for Point Lobos.]

"In view of the preceding decree relating to information of the land which the petitioner asks, I will say that it is vacant, and that said petitioner possesses the necessary requisites, according to the law in the matter; but as to the place occupied by the military point, I cannot give information, because I know nothing of its *ejidos*.

"PUEBLO OF SAN FRANCISCO, August 16, 1845.

"JE. DE LA C. SANCHEZ."

The instances that we cite might be indefinitely multiplied out of the inexhaustible store of illustration in every branch of law, and practice, and nomenclature, relative to the matter, which the old archives afford.

The land claimed by the Mission in 1828, that is, their ejidos, as conventionally understood, are of registry in the archives in the book of registration described as follows in Jones' Report of 1850, (p. 5:)

"Cuaderno del registro de los sitios, fierros y senales que posean del territorio de la 'Nueva California.' (Book of registration of the farms, brands, and marks for marking cattle possessed by the inhabitants of the territory of New California.)

"This book contains information of the situation, boundaries, and appurtenances of several of the Missions, as hereafter noticed; of two Pueblos, San Jose and Branciforte, and the records of about twenty grants, made by various Spanish, Mexican, and local authorities, at different times between 1784 and 1825, and two dated in 1829. This book appears to have been arranged upon information obtained in an endeavor of

the Government to procure a registration of all the occupied lands of the territory."

The mission lands, or ejidos of this Mission, as then claimed, are designated as follows in the above described book:

"*Mission of San Francisco.*—To this Mission, according to the report of its actual father missionary, Friar Thomas, given under date 8th January, 1828, limits or designation of limits of its lands were prefixed in 1814 by Governor Don Pablo Vicente de Sola in accordance with the officers of the Presidio and Father Friar Ramon Abella, who administered it in that time—reckoning from the Mission to Laurel estuary (easterly direction.) At the South, across the mountains, on the coast, it has a rancho named San Pedro, with grain fields and where its cattle pasture."

For practical purposes the tract thus claimed may be described as bounded latitudinally by Mission creek at one extremity, and Laurel creek, or estuary, (about two miles southeast from San Mateo creek) at the other, and longitudinally by the bay of San Francisco and the Pacific ocean.

These registered limits were gradually reduced by grants in private ownership, made after official inquiry and ascertainment of non-use or non-necessity, as follows:

1. Rancho of *Buri-Buri* granted 18th September, 1835, to Ensign Jose Sanchez, four square leagues.

This land fronts on the bay about half way between the northerly and southerly limits above indicated. It was petitioned for as early as 1833, but the grant was successfully contested by the Missionaries until January, 1835, when, the temporalities of the Mission having been turned over (under the act of secularization,) to secular administration, the case was revived. The lay commissioner then in charge of the establishment, reported that the tract had not been of use to the Mission for the space of fifteen years. Thereupon, after a subsequent reference to the Alcalde of San José, and from him to the Alcalde of San Francisco, and without objection from either, the grant was made. (Expediente, No. 20, Archives.)

2. Rancho of *Laguna de la Merced*, granted September 23, 1835, to José Antonio Galindo.

3. Rancho of *Salinas*. One square league, granted October 10, 1839, to José Cornelio Bernal.

There are two expedientes in this case. The first is No. 2 in Jimeno's index; the second, No. 177; also, so denoted in the alphabetical list attached to Jones's Report, Appendix, 33. In the first, (November, 1834; January, 1835,) the petition is noted as "*Negado*"—negatived; in the second, as "*concedido*," and the facts are peculiarly illustrative of the whole theory of Mission lands. Bernal made his first petition 2d November, 1834, stating that the tract, "although *pertiniciente* to the Mission," was not then occupied. The Governor, (Figueroa,) referred the petition to the military commandant, ("el Commandante Militar de San Francisco,") with directions thence to transmit it to the commissioner of the Mission. That the reference should have been made to the military commander requires a word of explanation. The Captain of the Presidio had up to that date the political (or municipal) as well as the military jurisdiction. The change of municipal jurisdiction from the military to the civil authority occurred about a month later, viz: December, 1834. (See Hart *vs.* Burnett, before cited.)

Under these orders, the military commander reported that the tract pertained to the Mission, and was still used for the pasturage of a portion of its stock. The commissioner of the Mission reported, on the part of that establishment, that he had given leave to some Indians (four in number) to sow wheat there, while tending the tame stock of the establishment. Nevertheless, leave might be given to the petitioner to make a corral, &c., and occupy the land as "ejido" of that *poblacion* (the Mission,) as he proposed to become a resident of it and build a house. The governor decided in consequence, that as it appeared from the reports that the tract was still occupied by the cattle of the Mission, *comun*, (which is literally in this connection a community of tenants in common,) the land could not be granted to him in property, but he might pasture his cattle there, or ask for some other tract which might be "vacant."

The grant was not made because the land was *not vacant;* the neophyte equity still existed, although there were only "four" individuals of the race left to represent it. Bernal did not avail himself of the suggestion to apply for a different locality, but like the reverend fathers, in the case of the lands of Santa Ynez, quietly bided his time, until 1839, when the land being "declaratively" as well as positively vacant, the grant was made, in recognition of his right *ad rem*, acquired as first *pretendiente.*

4. Rancho of *La Visitacion* granted to Jacob P. Leese, 31st July, 1841, two square leagues.

It is not necessary to continue the catalogue, these being sufficient to illustrate the doctrine and practice.

Thus the nominal or conventional ejidos of the "establishment" mentioned went on to be reduced by successive degrees till the time of the petition of the young de Haros, when the functions of the mission, as such, had absolutely ceased, and its necessities for *mission* ejidos had also absolutely ceased.

In its new character of *ex*-mission or church curacy it was still entitled to *ejidos;* and those ejidos, we say, have been ascertained to the full extent claimed for them. The rules or principles on which they were ascertained are no way in question here. Suffice it that they were satisfactory to the church and to the Government.

The ejidos claimed for the "establishment" in its then and now character, are set forth in the following extract:

[Extract from the petition of Joseph S. Alemany, Bishop of Monterey, to the U. S. Land Commission. Case No. 609.]

"The church lands at the Mission of San Francisco, in the county of San Francisco, commonly called the Mission Dolores, about two miles south of the city of San Francisco, consisting of a church about one hundred and twenty feet by thirty-five, with a graveyard about one hundred feet by two hundred, adjoining it on the right, and a block of buildings about three hundred by one hundred and fifty feet, adjoining it on the left, within their curtilage.

"Also, a garden of about three hundred varas square, lying back of the church.

"Also, another garden of about four hundred varas square,

in front of the church and distant about two hundred and fifty yards from it."

The ejidos thus claimed were confirmed by the commission, without diminution or abridgement, as follows:

[Extract from decree of confirmation of the United States Land Commission in case No. 609, Joseph S. Alemany, claimant.]

"The church and the buildings adjoining it being the same which are known as the church and mission buildings of the Mission of San Francisco, commonly called the Mission Dolores, together with the land on which the same are erected, and the curtilage and appurtenances thereto belonging, and the cemetery adjoining according to its ancient limits and boundaries.

"Also, the premises known as the mission garden lying in the rear of the said church, adjoining the same, and the cemetery above mentioned, with the ancient limits and boundaries of the same as used and occupied by the priests of said mission. And, also, another garden of said mission situated in front of said church, and on the opposite side of the street, with the ancient limits and boundaries of the same as long used and occupied by the said priests."

The ejidos thus claimed and thus confirmed, have also been officially *measured*, and to satisfy the utmost demand of the opinion of the district court, "assigned" by virtue of a United States patent.

We suppose that this removal of uncertainty as regards the possible "ejidos of the mission establishment" also relieves the Potrero grant from that possible contingency.

The title in the present case is spoken of throughout the opinion of the learned judge of the district court as, if "provisional" in some exceptional sense; and out of deference to the learned judge, and willing to give to his argument its full force, we have so far argued the case somewhat on that supposition. We now proceed to show that our title is *not*, in any exceptional sense, "provisional," nor provisional in any other sense than are the mass of Mexican grants which have been acted on and confirmed.

We have stated that we agree with the learned judge

in supposing that the conditions attached to the present grant, whatever they are, and in whatever respect they are peculiar, were inserted for reasons applicable to the case —not capriciously, or accidentally, but on purpose— "ex industria;" and, moreover, that this will be found to be the case wherever there is occasion to examine critically the particular conditions of any particular grant, and the motives that led to them. An instance will illustrate this point.

The case of the reverend fathers missionaries, in application for lands out of those of the Mission of Santa Ynez for a college endowment, has been hereinbefore (p. 19 *et seq.*) referred to. For a clearer understanding, we quote the exact words of the reverend fathers in that part of their petition which is illustrative of the argument. After describing the character in which they petition, namely, as having been appointed, by the bishop of the diocese, founders, rectors, and professors of the proposed seminary, and designating the lands they desire, and which they denominate as "*perteneciente*" to the Mission of Santa Ynez, they go on to say:

ORIGINAL.

"Y aunqué es verdad qué dicho terreno lo tiene la mission occupado con parte dé su ganado, pero consultada la voluntad de los Neofitos, consienten gustosos y espontaneamente en qué sea tambien ocupado por el repedido seminario con bienes semovientes, raizes y demas que le convenga, con la condicion de que sigan pasteando en el sus ganados, poor lo que pidemos a V. E. es la aprobacion de éste consentimiento, y el derecho ad rem interim se declara valdio, en cuyo caso pasara immediatamente a tener el derecho in re, y la propriedad absoluta."

TRANSLATION.

"And although it is true of said land that the mission has it occupied with a part of its cattle, yet the will of the neophytes being consulted, they consent gladly and spontaneously that it may be likewise occupied for the said seminary with live stock, (bienes semovientes, means literally self-moving property,) fixtures and other conducing ways, with the condition that their stock continue to pasture in it; therefore what we ask of Y. E. is the approbation of this consent and the right in the *ad rem* interval of declaring it vacant, in which case will come immediately to attach the right *in re* and the absolute property."

The Reverend Fathers did not need to have studied the civil or secular law to understand the force and effect of the terms they were using. The distinction between the *jus ad rem* and the *jus in re* is as well understood in ecclesiastical

law, and the advantage of obtaining the first as preliminary to the second, fully appreciated in that subtle branch of science. Governor Micheltorena, in the conditions attached to the grant, shows that he was even better aware of all the bearings of the case. He knew, evidently, that the absolute "investiture" necessary to the right *in re* could no more take place with respect to the corporeal hereditament of lands than to the incorporeal hereditaments of a church benefice, till *after* a "declared vacancy."

As between the conditions attached to that concession, and those in the case at bar, there are notable points, both of similarity and of difference.

The grantees in each case alike are forbidden to obstruct the high roads, right of way or other servitudes; but unlike, the Reverend Fathers, are authorized to "circar"—that is, fence in or enclose; while the Potrero grant is silent in that respect—the reason why, that in the name "Potrero" an inclosure is understood, and the use to which the tract was to be applied required an inclosure. The respective "interesados" were alike required to put their respective tracts to use; and, unlike, the *manner* of use was in one case discretionary, while the *object* or *usufruct* was obligatory, and in the other the manner of use was obligatory and the object or destination of the results was discretionary; that is to say, the Reverend Fathers taking the grant in a fiduciary capacity, were under obligation to devote the land and its profits to the special objects of the endowment, but with discretionary power over the manner of making it and them available; while the brothers de Haro were required to put the tract granted them to a particular use, namely, that which they had "*intentado*," or *made proposals for* in their petition; but they were not restricted as to the purposes to which they should apply the profits of their enterprise. Both are required so to order their operations as not to prejudice any Mission property (cattle); but in the case of the Reverend Fathers, the prohibition is in the present tense, because it is already ascertained that the Mission of Santa Ynez has cattle on the ground which might

be prejudiced; while in the case of the brothers de Haro, the condition is purely in the nature of a saving clause, inserted out of abundant caution; because the Mission concerned had then literally "no cattle," and was not likely ever to have any.

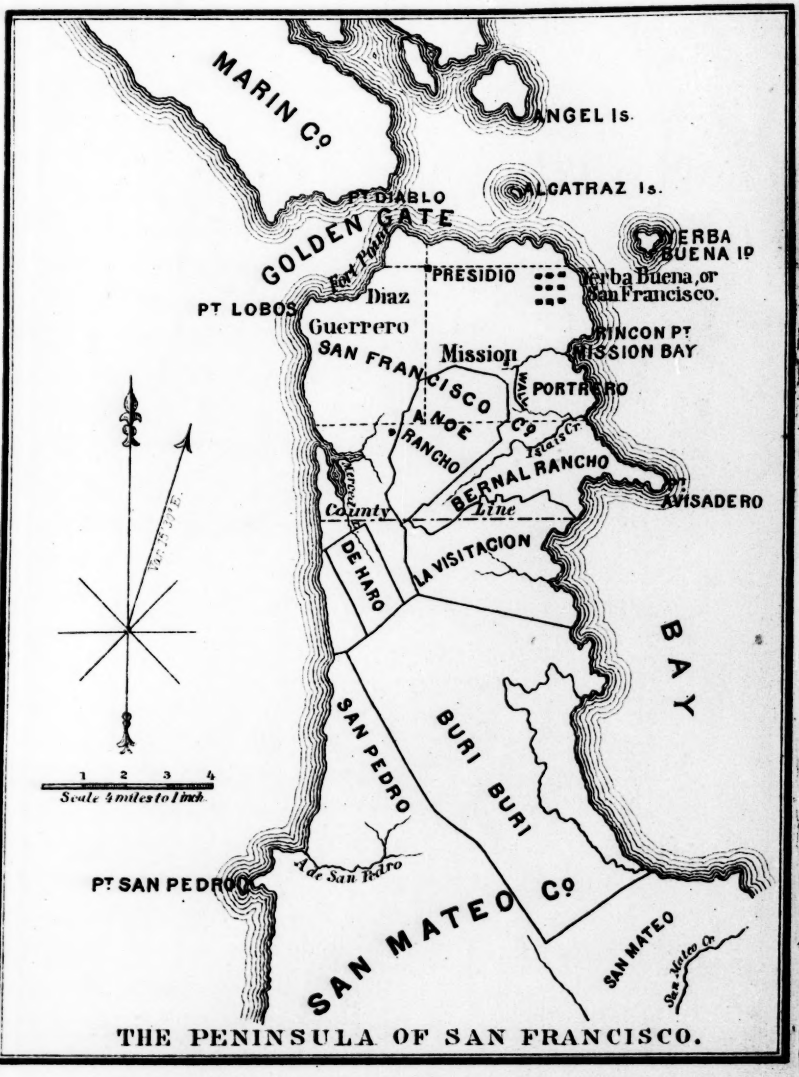
Moreover, though the Reverend Fathers supposed that their inchoate right—their *jus ad rem*—would ripen into *plenum dominum*, at the identical instant, and by the identical process of declaration of vacancy, or of withdrawal of the prior lien—the neophyte incumbrance—the Governor knew the law better. There must not only be a vacancy ascertained on the one hand, but there must be an induction, an investiture in addition to the feoffment, on the other. Hence, he directs that as soon as the lands shall be declared disoccupied of the Mission cattle upon it, the proper magistrate should be applied to to measure the assigned quantity, and give the Reverend Fathers—trustees of the college—actual seizin of the premises by juridical delivery. That process was necessary to complete their title, and was made obligatory by the terms of the grant. Let us note here the differences in the facts of this case and that of the brothers de Haro, and consequent difference in the conditions prescribed for the latter.

In the latter case there was no waiting for a declaration of vacancy. The *fact* of vacancy existed at the time of entering the claim, or making the petition, and it became a recognized and "*declared*" fact by the reports of the local magistrate and Governor's advising officer, adopted and acted upon by the Governor. Hence, it was not only competent for them to occupy *instanter*—to make immediate entry—but they were *obligated to do so*, within a brief period, under penalty of losing their right. It did not need measurement in advance of actual seizin, because its name denoted its limits, and in itself presupposed a segregation already made. Hence, the grantees are not required to apply for measurement, but only to hold themselves subject to some future measurement contemplated for a neighboring and possibly a coterminous right; meanwhile—"*interim*," as

the reverend fathers would say—their possession remaining intact. The grant itself constituted their authority for actual entry—their livery of seizin—and was delivered to them for their warrant of entry, and their safeguard in the premises. Here occurs another "variation in phraseology," as the learned judge would say, showing a clear and discriminating use of language and appreciation of circumstances. The *titulo* to the reverend fathers is directed to be delivered to them for their *due proof*—"su debida constancia"—while that to the brothers de Haro is directed to be delivered to them for their "*resguardo*"—literally, safeguard. The one stands as "due proof" that the reverend college trustees have a priority of right in the contingency that the lands fall vacant by the withdrawal of the neophyte equity, and as a warrant on the happening of that contingency, to the proper magistrate to ascertain their boundaries and put them in judicial possession. The other stands as a warrant to the "interesados" themselves—not as due proof, or "debida constancia," to authorize action on the part of some one else—but as their individual warrant *to enter into possession*, of their own motion and in their own right, and as their safeguard in doing so. The proposition stands, therefore, on a perfectly solid foundation, that the brothers de Haro, in the very incipiency of their case—that is, by making their petition "en pretension"—acquired the right *ad rem*, in a much clearer sense than the reverend fathers acquired it, even by the Governor's acquiescence in the prayer of their petition; and it is to be noted that the fathers recognize the fact that under then existing circumstances it was not in the power of the Governor to grant them more than an inchoate right, to a perfection of which a subsequent action would be necessary, and that action contingent upon a dubious and uncertain event—an event not contemplated in law, (for the law contemplated the conservation and not the destruction of the indigenous race,) whatever might be its probability in fact. The estate the reverend fathers acquired was more in the nature of a contingent remainder than a right *ad rem*. Therefore, we say

that the brothers de Haro acquired in the incipiency of their case the right *ad rem* in a clearer sense than the reverend fathers acquired it through the Governor's concession; because the tract which the brothers de Haro made claim or pretension to, had no incumbent or intervening equity upon it; was already in contemplation of law subject to grant, and consequently subject to claim, and on which the first claimant, by the mere act of lawful claiming, established a lien equivalent to a right *ad rem*. Consequently, that when they entered into possession, in pursuance of the executive *warrant* and *requirement*, they united the two qualities—the *right* and the *corporeal possession*—which constitute the *jus in re*.

WM. CAREY JONES,
Of Counsel.



THE PENINSULA OF SAN FRANCISCO.

SUPREME COURT

OF THE

UNITED STATES.

December Term, 1866.

JOSEFA DE HARO, ET AL.,
Appellants,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT OF CALIFORNIA.

INTRODUCTORY.

As several counsel are to present their views to the Court in the briefs annexed, it is deemed appropriate that they be prefaced by a condensed history of the case. And before proceeding with the argument proper of the case, it is our duty to inform the Court that there appears in the Transcript several documents which are unquestionably *antedated*—not forged, in the proper signification of the word, since the *signatures* of the persons purporting to have signed are *genuine*, and many depositions which, to-day, we know are

full of untruths. Happily, the false is easily separated from the true; and it is clear from the Transcript that neither the *original grantees*, or any one claiming through or under them, are in any degree culpable for the attempts which have undoubtedly been made in the case to impose upon the Court. The original grantees—from whom the claimants derive title—Ramon and Francisco de Haro—were killed at San Rafael (Marin county, California,) by the Americans, in the war of 1846, which led to the annexation of California to the United States, long before there could have been any *motive* for forgery or perjury in connection with this title. Their father they being unmarried, one of the most reputable of the Mexican population, was their heir, and he died in (1849) eighteen hundred and forty-nine, long prior to the organization of the Land Commission, or any litigation relative to California land titles. His successors in interest were (6) six minor girls and one minor son, possessed of little education and no business experience, who, as they say in their amended petition (page 21–22, Transcript,) "had very little knowledge of what the papers were on which they relied for title, or their nature and contents." From these latter heirs the estate has passed into the hands of numerous of the most respectable American citizens of California, who, until a recent period, shared in the prevailing ignorance of Spanish laws and customs. Almost every one who has heard of California, knows somewhat of the history of the gross frauds which

were practiced, after lands formerly unsaleable were rendered by American enterprise, and the fabulous growth of this coast, as valuable as those which, in the Atlantic States, have been cultivated and improved for ages. Such frauds were, in many instances, perpetrated by the very officials who, under Mexico, were entrusted with the duty of granting lands; and the identity of signature, the character of the signer, and the utter confusion which prevailed in the archives of the former Government, rendered it easy to impose spurious, antedated documents, not only on purchasers, but on the bar, and the judiciary. Witnesses of California birth for years obtained a livelihood by the fabrication of documents in the Spanish idiom, and attempting to maintain them as genuine by perjury; and it was not until after the Americans had, step by step, reconstructed the Mexican archives, that such frauds and perjuries became easy of detection. The present Secretary of War Mr. Stanton, on his visit to this coast, so gathered up, collated and systematized the various written matters forming the official history and acts of the Mexican California government, as to make the labor easy of distinguishing truth from falsehood: a task which could not have been successfully performed even by *his* energy and great acumen, without the aid and authority of our government. Prior to that time, the most careful examination of witnesses, and the most earnest research, were unequal to guarding the Courts against being so far imposed upon as to have confirmed some fraudulent and spurious land claims.

In the case at bar, the claimants were *imposed* upon by two forged grants and an antedated certificate of juridical possession. They, in good faith, presented these spurious papers to the Court, submitted them to the test of a judicial examination, and finally, when they discovered their true character, openly abandoned them, and themselves announced the frauds and imposition. That it was not for want of diligence upon the part of these claimants that they did not at first discover the real character of those documents, and the evidence given in support thereof, is evident from the fact that the Judges of the Land Commission (assisted, as they were, by a Special Law Agent,) and with all the lights which at that time could be furnished by the archives in the possession of the Commission, *founded their decision confirming the claim of the petitioners upon said forged documents*, and it was naturally not a difficult task to impose upon the present claimants, not one of whom could, by any possibility, have known the true state of the case. The grantees, their father, and the old Alcalde of San Francisco, were dead; Jimeno and Michelteareno were in Mexico; and the estate had been for a long time in the possession of women and children, none of whom had any knowledge of the early history and documentary evidence of the title. It would be unnecessary to make this statement to a California Court, or to persons intimately acquainted with the local history of that State. They would readily see from a simple reading of the Transcript, that the claim-

ants, in presenting these spurious documents, were the *victims* and not the accomplices of a fraud; they were the imposed upon, and not the imposters; and, in presenting this case to the Court, the claimants and their counsel wish it to be clearly understood that they do not invoke the doctrine settled already by this Honorable Court, that where that which is genuine in the grant can be distinguished from that which is fraudulent, the genuine part will be upheld, and the false rejected; but simply say to the Court: We present you documents of unquestioned and unquestionable validity and genuineness, and we ask you to determine our rights by *those alone*. Documents which we now know to be antedated and spurious are to have no connection with our real title, and which were put in evidence in the lower Court simply because a fraudulent imposition was practiced upon us. We now withdraw from the case all such documents, and the evidence upon which they were sought to be sustained. We denounce the documents as spurious, and we claim of this Court, as matter of right and justice, that we shall not be prejudiced by skilful frauds which have heretofore deceived the community at large, the most cautious and able of the members of the bar, and even the Courts.

Our whole case rests on facts and documents, the truth and genuineness of which cannot be, nor are they disputed, and it is by these we insist our cause must be judged. The documents in the case, the

genuineness of which is now universally conceded, are as follows:

The Petition of Ramon and Francisco de Haro, dated April 12, 1844. Transcript, page 21.

Tne permission given by Francisco de Haro, the father to his sons. Page 21.

The request made by Francisco to Alcalde Hinckley, dated April 13, 1844. Page 22.

The Report of Alcalde Hinckley, to the effect that these lands are vacant, &c., dated April 13, 1844. Page 22.

The Reference by Michelterena, Governor, &c., to Jemino, Secretary of State, dated April 29, 1844. Page 22.

The Report of Jemino, Secretary, &c., to the Governor, dated April 29, 1844. Pages 22, 23.

The Decree of Micheltereno, dated April 29, 1844. Page 23.

The Title or Patent issued May 1st, 1844, signed by Michelteno and Jimeno. Page 23.

The Record of the Grant in the Toma de Razon, and in Jimeno's Index. Page 176.

We insert here translation and copies of the documents we rely upon.

1844. Expediente instituted by Citizens Francisco and Ramon de Haro, in claim of the place named Potrero de San Francisco. 360.

To His Excellency the Governor of Californias:

Francisco de Haro, Ramon de Haro, in the name of our family Mexicans by birth, and established in the ex-Mission of San Francisco de Asis, before your Excellency, with all due submission, represent: That being compelled to remove the portion of stock that

belonged to my deceased mother from the rancho of the deceased José Antonio Sanchez, and proposing to demonstrate it, we beg your Excellency that, in the exercise of your authority, you concede to us a small piece of land named "Potrero of San Francisco," being from north to south, two thousand two hundred and eighty-eight varas, and from east to west, two thousand five hundred and eight, being measured as far as the hilly part (there being no competent survey beyond that) as shown by the annexed diseño; and as said land can be enclosed, we propose to place thereon the tamed stock, the range being small that is occupied by all the stock of my father, who has given us permission to make this petition, we being under the paternal dominion, and to be represented:

Wherefore, we pray your Excellency to be pleased to grant us this benefit, in which we will receive grace and favor, deposing that we act in good faith: this petition not being written on the corresponding sealed paper, because there is none.

San Francisco, April 12th, 1844.

RAMON DE HARO,
FRANCISCO DE HARO.

The undersigned by these presents, gives to his sons, Francisco and Ramon de Haro, the requisite permission, (they being minors,) to enable them to petition the Superior Government of the Department, for the concession of the Potrero of the Ex-Mission of San Francisco de Asis, which is vacant, as the same is shown on the accompanying diseño. It would be, (if your Excellency should think proper to make said concession,) for the benefit of their other brothers [and sisters] also. And for the ends that may be necessary I give this at the said Ex-Mission of San Francisco de Asis, on the 12th of April, 1844.

FRANCISCO DE HARO.

To the Alcalde of First Nomination of San Francisco,

Francisco de Haro, a resident of this jurisdiction, in the name of his sons, Francisco and Ramon, in due form represents—That his said children having his permission to petition the Superior Government of the Department for the concession of the Potrero, which is situated in front of the ex-Mission of San Francisco de Assis, which is vacant, and its enclosure being destroyed; and desiring to avoid the delay which would be occasioned, if it were required to send the expediente back from Monterey for a report upon the same, I apply to you for such report as you may think proper, in relation to the matter.

Wherefore, I pray you to do what is just, being pleased to accept this on common paper, for want of that which is sealed, depositing what is necessary, etc.

San Francisco, April 13th, 1844.

FRANCISCO DE HARO.

San Francisco, April 13th, 1844.

In consideration of the reasons set forth by the petition, I give a report in relation to the place petitioned for, and say that there are no pretendants or claimants up to the present date, and it is not occupied by any community or person whatever.

GUILLERMO HINCKLEY.

Monterey, April 29th, 1844.

Let the Señor Secretary of State report, after making the necessary investigation.

MICHELTORENA.

To his Excellency the Governor:

The Mission of San Francisco has now no property whatever, consequently the Potrero petitioned for is vacant, as is accredited to the petitioners by the report of the proper magistrate, and as ejidos are to be assign-

ed to said establishment, I think that, in the meanwhile, the interested parties may occupy the land by a provisional license, which your Excellency may be pleased so to order as to be without prejudice to the community, or any private person. The pleasure of your Excellency will be the most proper.

MONTEREY, April 29th, 1844.

MANUEL JIMENO.

MONTEREY, April 30th, 1844.

I agree. MICHELTORENA.

MONTEREY, April 30th, 1844.

In view of the petition with which this espediente commences, the reports that precede, with all other matters that are necessary to be considered, in conformity with the laws and regulations upon the subject, I declare Francisco and Ramon de Haro granted the provisional occupation of the lands named Potrero of San Francisco, of the extent of one-half a square league, its boundaries being the Esteros of the Mouth of the Potrero, and the hilly range (lomeria) that it surrounds. Let the corresponding title issue, and let registry be made of the same, and let a communication be directed to the person in charge of said establishment. His Excellency the Governor thus ordered, decreed and signed, which I attest.

Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the Staff of the same, and Inspector of the Department of the Californias:

Whereas, Francisco and Ramon de Haro have petitioned for the concession of the Potrero called of San Francisco, from the mouth of the esteros, with the range of hills which it surrounds the necessary, proceedings having been taken, and the investigations

having been made, as required by the laws and regulations in regard to the matter, I have determined in exercise of the authority conferred on me, in the name of the Mexican Nation, to permit them the occupation of the said Potrero, subject to the measurement to be made of the ejidos of San Francisco, and to the following conditions:

1st. They cannot by any title sell or alienate the same without prejudice to [to the prejudice of] any property that the establishment of San Francisco may have.

2d. They shall not obstruct the crossings; highways, and servitudes, devoting it to the cultivation and stock that they propose to introduce, but within one year at furthest it must be occupied.

3d. The land of which mention is made, is of the extent of one-half league; if they violate these conditions they will lose their right to this provisional concession, which is delivered to the interested parties for their security and other ends.

Given in Monterey, on the first day of May, one thousand eight hundred and forty-four.

MAN'L MICHLLTORENA.

MAN'L JIMENO, Secretary.

1844. Espediente promovido por los ciendadanos FRANCISCO y RAMON HARO, en pretencion del parage nombrade Potrero de San Francisco. 360.

Exsmo. S$^{or.}$ Gobernador de las Californias:

Francisco de Haro, Ramon de Haro, à nombre de nuestra familia, Mejicanos por nacimiento, y abesinados en la exmission de San Francisco de Asis, ante V. E. con la mas recta sumision asen presente que teniendo que estraer la parte ganado que le corresponde à la finada mi madre del rancho del finado José Antonio Sanchez, y tratandolo de reducir, imploramos á S. E. para que en uso de sus facultades se nos conseda un

corto terreno que se nombra Potrero de San Francisco, teniendo de N. á S. dos mil dosientos ochenta y ocho varas, y de E. á O. dos mil quinentos ocho, siendo medido hasta las lomerias, por no haver facultativo para el efecto, segun el diseño que acompañamos á V. E., y como ocho terreno se puede sercar tratamos de meter el ganado manso por ser muy chico, el que ocupa hoy todo el ganado de mi S^{er}. padre, quien nos ha dado el permiso, por estar bajo de la parte potestad por representar, P. T.

A V. E. suplicamos se digne el asernos este beneficio, de lo que recíviremos merced y gracia, jurando no se de malicia. No siendo en papel del sello que corresponde por no haverlo.

San Francisco, Abril 12 de 1844.

Ramon de Haro.
Francisco de Haro.

El abajo firmado: Por el presente doy á mis hijos, Francisco y Ramon de Haro, el correspondiente assenso para que puedan (por razon de su menor edad) pretender del Superior Gobierno del Departamento la concecion del Potrero de la ex-Mision de San Francisco de Asis, que se halla valdio, el cual demuestra el diseño que acompañan á su peticion debiendo ser, (si fuere del superior agrado consederselos, para el beneficio de sus demas hermanos tambien, y para los fines que les convengan, les di el presente, en la referida ex-mision de San Francisco de Asis, à 12 de Abril de 1844.

Francisco de Haro.

Sr. Alcalde. de 1 ^{ro} Nominacion de San Francisco:

Francisco de Haro, vecine de esta jurisdiccion, á nombre de sus hijos Francisco y Ramon: en devida forma comparesco: y espongo, hallarse mis citados hijos con mi correspondiente assenso para solicitar del

Supremo Gobierno del Departamento la concesion del Potrero que se halla en frente de la Ex-mision de San Francisco de Asis; el cual se halla valdio y asolados sus cercos; y deseando allanar los inconvenientes que puedan entorpecer el pronto despacho de otra peticion para tener que venir â informe desde aya: y ovio de estos atrazos; ocurro â V. â fin de que se sirva: instruir el que juzgue conveniente en mi presente solicitud. Por tanto, A. V. pido provea en justicia, sirviendose admitirla en papel comun por no haber sello que corresponde Juro lo n.º, &c.

San Francisco, Abril 13 de 1844.

FRANCISCO DE HARO.

San Francisco de Asis, Abril 13 de 1844.

Por las razones que espone el pretendiente doy informe del parage pedido y digo que no hay pretendientes, ni reclamantes, hasta la fecha y no esta ocupado por comunidad ni persona alguna.

GUILLERMO HINCKLEY.

Monterey, Abril 29 de 1844.

Informe el Sr. Secretario de Despacho, tomando los informes necesarios.

MICHILTORENA.

Sr. Gobernador.

La Mision de San Francisco yà no tiene bienes ningunos, y por consiguiente el Potrero que se pretende estaà baldio, como lo acreditan los solicitantes con un informe del Juez respectivo, y como à dicho establecimiento debe señalarsele sus egidos, pienso que entre tanto, pueden ocupar el terreno los interesados por una licencia provicional que V. E. se digne darles por

no perjudicar à la comunidad ni particular alguno. La disposicion de V. E. serâ lo mas acertado.

Monterey, Abril 29 de 1844.

MANUEL JIMENO.

Monterey, Abril 30 de 1844.

Confe.

MICHILTORENA.

Monterey, 30 de Abril de 1844:

Vista la peticion con que dà principio este espediente los informes que preseden con todo lo demas que se tuvo presente y ver conbino de conformidad con las leyes y reglamentos de la materia, declaro à Francisco y Ramon Aaro, agraciados en que ocupen provicionalmente el terreno que nombran Potrero de San Francisco en atencion de medio sitio de ganado mayor, siendo sus linderos los Esteros de la boca del Potrero, y las Lomerìas que lo circunde. Librese el correspondiente despacho, tomese razon, y dirijase una comunicacion al encargado dicho establecimiento. El Exmo. Sr Gobernador asi lo mando decreto y firmo. Doy fe.

Manuel Michiltorena, General de Brigada del Ejèrcito Mejicano, Ayudante General de la plana mayor del mismo Comandante General, Gobernador è inspector del Departamento de California:

Por cuanto Francisco y Ramon Haro, han prètendido la consecion del Potrero que se nombra de San Francisco, desde la boca de los Esteros, con la lomeria que lo circunda, y habièndose practicado las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos de la materia he venido en use de las facultades que me son conferidas à nombre de la Nacion Mejicana, en permitirles la ocupacion del Potrero mencionado, sugetandose â la medicion que se haga de los egidos del establecimiento de San Francisco y á las condiciones siguientes:

1a. No podran por ningun tìtulo venderlo, ni enagenarlo, sin perjudicar algunos bienes que tuviere el establecimiento de San Francisco.

2a. No impediran las trabesias, caminos, y servidumbres, destinandolo para el cultivo, y bienes que intentan introducir, pero dentro de un año á lo mas estará ocupado.

3a. El terreno de que se hace mencion es de medio sitio de ganada mayor, y si contrabinieren à estas condiciones perdera su derecho, à esta consecion provicional que se entriega à los interesados para su resguardo y demas fines.

Dado en Monterey à primero de Mayo de mil ochocientos cuarenta y cuatro.—Manuel Michiltorena.—Manuel Jimeno.—Es copia de la original que se entrego à los interesados.

MANUEL JIMENO.

Extracts from "Toma de Razon."

225. Dⁿ Maccimo Martines en 1° de Mayo de 44.

Se le dio titulo en aumento del que poseia antiguamente en estencion de dos sitios de ganado mayor.

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226. Dⁿ Franᶜᵒ y Ramon Haro en 1° de Mayo.

Se les dio titulo del terreno nombrado el Potrero en estencion de medio sitio de ganado mayor.

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227. Dⁿ Franᶜᵒ Guerrero en 1° dt Mayo de 1844.

Se le dio titulo del parage nombrado—en estencion de tres cuartos de legua poco mas ó menos.

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228. Dⁿ Franco. Arce en 12 de Mayo de 1844.

Se le dio titulo del paraje nombrado Santa Ysabel en estencion de cuatro sitios de ganado mayor poco mas ò menos.

Which entries we translate as follows:

225. Don Francis Martinez, on 1st May, 1844. Title delivered to him in augmentation of that which he previously possessed in extent of two leagues square.

226. Don Francisco and Ramon Haro, on 1st May. Title delivered to them of the tract named el Potrero, in extent of one-half leagues square.

227. Don Francisco Guerrero, on 1st May, 1844. Title delivered to him of the place named, in extent of three-quarters of a league, little more or less.

228. Don Francisco Arce, on 12th May, 1844. Title delivered to him of the place named Santa Isabel, in extent of four square leagues, little more or less.

Extracts from Jimeno's Index.

Arroya Chico	Conda	a Dn Edwardo A. Farwell	359
Potrero de San Franco	Concedo	a Dn Franco y Raymon de Haro	360
Canada de los Aguas	Conceco	a Dn Domingo Felis	361

BRIEFS FOR APPELLANTS.

We might, in this case, rest with confidence upon the opinion of the learned Judge of the District Court, who decided it. He states positively, page 183 of the Transcript, that there can be no doubt of the genuineness of the various documents found in the Archives, consisting of the petition of Ramon and Francisco de Haro, dated April 12, 1844, to Michelteren o for the *grant* of a *small* piece of land called Potrero de San Francisco; the reference to the Secretary; the Secretary's report that the land petitioned for was vacant; and a provisional grant issued by Michelterena. See page 183 of the Transcript. The learned Judge further states that the petitioners repaired the old wall which had been erected around this tract by the priests; that they placed their cattle and horses thereon, which were regularly attended by their vaqueros and themselves, who resided at the Mission. See page 187 of Transcript. In construing the provisional grant in this case, the learned Judge states, in so many words, "*that it was a permission*

"*given to the grantees to occupy until an assign-*
"*ment of the land to the Pueblo is effected.*" So that, taken as a whole, the District Judge finds as matter of fact, that in 1844 the proper Mexican authorities granted to Ramon and Francisco de Haro certain lands, under certain conditions, to be occupied by them until an event should take place which can now never possibly happen. The point which the learned Judge did not discuss, and apparently was never brought to his notice, is this: What is the effect, as a matter of law, of the solemn permission given by a government to its citizens to occupy land, subject to certain conditions, until a specified event happens. Whether a permission to occupy under onerous conditions, and until a certain event happens, is a right determinable at will by the government, before the event happens, and before any of the conditions are broken, or whether, as we contend, it is a permission to occupy binding on the government until either some one of the conditions is broken, or that event happens by which the right to possess was originally limited, was not apparently discussed before the learned Judge, and was not touched upon by him in his opinion. If the Government of the United States, through Congress, were to grant to a man permission to occupy certain lands until a city of fifty thousand people were built upon them, we take it for granted, that by whatever name such an estate might be called, it would be held to vest in the owner the right to possess until such a city should be built, and any attempt to dispossess him

prior to the happening of the event by which the estate was limited, would be held, not to be merely a breach of good faith on the part of the government, but a palpable interference with vested rights. The learned Judge of the District Court has decided, in so many words, that in 1844 the proper authorities of Mexico granted the occupation of certain lands to the persons under whom claimants derive title, until such time as those lands should be measured and set off as a part of the ejidos of the establishment of San Francisco, and subject to certain conditions.

It is not pretended that those lands ever have been measured off as part of the ejidos of that establishment, and it is certain that they never have been and never can be so measured off. It is not pretended that any single condition of the grant has ever been violated. The authority of the Governor to make such a grant is conceded; and now, on this admitted state of facts, we ask this Court how a conditional grant, made by a government to occupy certain lands until a certain event happens, and as long as designated conditions are complied with, can be determined except in one of two ways; first, either by the happening of the event; or, second, by the non-fulfillment of some one of the conditions. Suppose certain lands were granted by A to B, until A should have heirs of his body: would it be pretended that A could revoke such a grant until he did have an heir of his body? Would it not be conceded that such a right would become a perpetual right to

occupy, when the death of A, without issue, should render it impossible that any heirs of his body could ever exist? The truth is, the District Judge has decided this case upon this point: that the grant is not a grant in fee, but that it is simply the grant of a right to possess or occupy. The opinion does not discuss at all the point which we contend is the only one in this case, and that is this: Conceding that the Mexican authorities granted to the De Haros only a right to possess and occupy this land, is not this right to possess and occupy still subsisting so long as the event limiting that right has not happened, and the conditions for the violation of which that right was to be forfeited, have all been complied with.

We have already said that the Judge of the District Court has expressly stated in his opinion, first, that the documents on which we rely are unquestionably genuine; second, that the condition of possession imposed by the express terms of the grant has been complied with; third, that the true construction of the grant is, that it is a permission given by the Mexican nation to occupy this land until certain ejidos should be measured off, to a certain establishment. We might rest this case on this finding of the lower Court, both of the facts and the true construction of this grant, on this simple, and, it appears to us, incontrovertible proposition: that this grant by a government to occupy land, subject to certain conditions, and until a certain event happens, can only be defeated by showing that the event has happened, or that

meant "that there are no pretendants or claimants up to the present date, and it is not occupied by any community or person whatever." So that we have the case of a small piece of land, *unoccupied, unowned, unclaimed.* But the Secretary goes on to state, in substance, that it is possible that the Mission of San Francisco may want these lands as ejidos. He does not say that they will not select other lands as ejidos; he does not pretend that these lands were fit to be ejidos, as they certainly were not; but he says a possibility depending on two contingencies, exists. Those contingencies were, first, whether any lands should ever be assigned to said establishment; second, whether, if any lands ever were assigned to that establishment these would be the lands selected. This bare possibility of this future contingent event was the sole objection found by the proper authority to the full compliance with the prayer of the petitioners.

The Secretary evidently thought that the prayer of the petition should be complied with so far as it could be, subject to this objection. And he says that he thinks: "that in the meanwhile the interested parties may occupy the lands by a provisional license." What do these words in the "*meanwhile*" signify, unless it is that until these identical lands are assigned to said establishment the interested parties shall remain in undisturbed possession of that land, and that there is no reason for disturbing them in possession until that contingency happens.

The Secretary continues, "while your Excellency may be pleased so to order as to be without prejudice to the community or to any private persons." Take, now, the objection of the Secretary to the full granting of this land with his recommendation to the Governor, and is it not clear that the Secretary, in substance, said to the Governor, these are vacant, unclaimed, unowned lands; but there is a possibility that a certain public corporation may at some day require them for public purposes; were it not for this possibility, I would recommend that a grant in fee absolute be granted to the petitioners. But, as this possibility exists, I do recommend you to grant them the lands, subject only to the possibility of this contingency happening. In other words, is it not clear that the single objection found by the Secretary, to the absolute granting of this land, should be the single limit or restriction which he recommended should be put upon the grant. Is it not clear that the substance of the Secretary's recommendation is this: "but for the possibility that exists that these lands may be wanted for public pnrposes, you should grant them absolutely; but, as that possibility does exist, you ought to grant them subject to and limited by this possibility, and only this."

Thus far in our analysis we have these facts: First, a petition for a piece of land unoccupied, unowned, and unclaimed; second, a willingness and a duty on the part of the Governor to comply with that petition, provided there were no ob-

jections; Third, a single objection found to a full compliance with the prayer of the petition, and that objection not consisting in any existing fact, but in a bare possibility or contingency that some future event might happen which would render these lands necessary for public purposes; Fourth, a recommendation to the Governor by the proper authority to comply with the request of the petitioners so far as he could, consistently, with this objection and this possibility.

We now proceed to analyze this provisional grant, license, lease, permission to occupy, or we do not care by what name it is called. We have seen that but the bare possibility of an event which probably never would happen, was the sole objection found to making a full grant of these lands. Did the Governor, in consequence of this objection, in substance reject the prayer of the De Haros, and refuse to give them any title at all; or did he grant the request of the petitioners to the extent that this objection permitted him? We contend that he fully complied with the prayer of the petitioners, so far as he could consistently with this objection and this possibility. In the first place, he commences his decree, which precedes the title, and in accordance with which the title issues, by stating, that he makes it in view of the petition with which this expediente commences, the reports that precede, with all other matters that are necessary to be considered, in conformity with the laws and regulations on the subject. So that whatever relief he granted, was granted in

compliance with the petition, the reports, and the colonization laws. That petition was for the fee absolutely—the reports were that the fee could be granted absolutely were it not for the existence of a bare possibility that the public might at some future day want these lands for ejidos. The laws and regulations on the subject, in conformity with which this decree was made, prescribed that unowned, unclaimed, vacant lands ought to be granted for just such purposes as this land was asked for, and that is, for the purpose of raising stock—the chief industry and product of the nation. The petition, the reports and the laws, are all made a part of this decree by direct incorporation, and this decree must evidently be construed in their light. Now, is it for a moment to be supposed, that either the Governor or the Secretary thought that these lands should forever be taken out of the market—should be forever excluded from the beneficial purposes of agriculture and commerce, simply because they might by possibility be afterwards wanted for a use for which they were then not necessary at all—a possibility so remote that it did not even suggest itself to the chief officer of the Pueblo of San Francisco, as is shown by the fact that he makes no mention of it in his report. The corporation in question had not yet selected any ejidos, nor was it by any means certain that it ever would. As a matter of fact, it never did. Even if it did select ejidos, it was almost an impossibility that it should select these particular lands, than which no lands could be imagined more

unfit for that purpose. It was hardly within the range of possibility that this rocky, barren, bleak tongue of land, which could under no circumstances have had any value but for the marvelous developments of later years, could have been selected by a corporation as the ejidos—the exit—the breathing places—the places for common resort—the outskirts for the convenience of its population—a population, as is historically known, that did not exceed, at the time of the American occupation, three hundred souls—that population residing too an average distance of three miles from the contingent, possible ejidos. Nor is it conceivable that such a bare possibility could have seriously acted upon the mind of the Secretary or the Governor. As we have seen, it did not occur as an objection to the petitioners, nor to Francisco de Haro their father, who had been a local official, in high standing, nor to the chief magistrate of San Francisco. It was a bare possibility, which only occurred to the mind of the Secretary, who resided a long distance from Yerba Buena—was not acquainted with its environs; and even he only regarded it as a bare, remote possibility.

Continuing our analysis of the decree of the Governor. He says: "I declare Francisco and Ramon de Haro *granted* the provisional occupation of the lands named Potrero of San Francisco." Now, what does the word "*provisional*," in connection with *occupation*, mean? The word provisional evidently means conditional—an occupation depending on something that is foreseen as a pos-

sibility; and what condition or possibility has been foreseen, excepting the possibility of the measurement of these ejidos? Why should the word "provisional" be used in this connection at all, unless something had been foreseen as a possibility which was to limit and bound the right of occupation granted by this decree? The decree then proceeds, "Let the corresponding title issue." We would here call attention to both of the words, "corresponding" and "title." The word corresponding evidently means corresponding with the views hereinbefore expressed—that is to say, corresponding with the petition, the reports thereupon, and the colonization laws; in other words, a title corresponding with the facts, that a petition asks for the land in fee, reports that declare that the land is vacant, unclaimed and unowned, but possibly may be wanted for future public uses, and with colonization laws prescribing that land vacant, unowned and unclaimed, shall be given to any Mexican citizen who will use them for ordinary industrial purposes. A title corresponding with all these facts is to issue. What is a title if it is not an evidence or an assurance of an estate in lands? This title issues directly from the Government. It is made under certain solemn laws framed for the encouragement of settlement and immigration. Is it not absurd to suppose that a solemn title like this can issue from a government, clothed with all the formalities of law, and yet convey no interest or estate? The decree continues, "*let registry be made of the same*," that is, let this title which is-

sues be recorded in the archives of the government. For what purpose should a title which conveys no title or interest be recorded in the archives of the government? What information would be imparted to any one by a registry, setting forth that a title had issued on a certain day, which title had conveyed no interest or estate in the lands therein described? The Mexican Archives were kept for the purpose of carrying out the colonization laws. The province of these archives was to inform the world that certain lands had already been granted, and by consequence were no longer open to settlement, and no longer subject to the disposition of the government. But can any conceivable reason be imagined why the government should insist on registering a title which conveyed no rights, and which is not a title in any sense of the word, when according to the theory of the United States, the lands would still be open to settlement, and subject to be granted to any person who should ask for them?

The next clause in the decree is, "let a communication be directed to the person in charge of such establishment."

A communication to what effect? Evidently that a title to this land has been issued, and has been recorded in government archives, which title corresponded to a certain petition praying for the absolute fee of this land, and to reports of the proper authorities to the effect that there was no objection to the granting the fee of this land, provided such grant were made subject to being de-

feated in case these lands should be measured off as ejidos of a certain corporation, and corresponding with certain laws declaring it to be the policy of the nation that lands situated precisely as these unquestionably were, should be granted to such citizens as would put them to their proper uses.

The grant was issued in accordance with this decree. We would call attention to the official language in which Micheltorena speaks of himself, "Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the Staff of the same, and Inspector of the Department of the Californias." Evidently this is the solemn language of an official, who is about to act in his official capacity, and to exercise powers conferred upon him by the nation. As an inducement to the grant the Governor praceeds to set forth the petition already analyzed, the taking of the necessary proceedings and investigation according to the colonization laws, and then continues, "I have determined in exercise of the authority conferred on me, in the name of the Mexican Nation, to permit them the occupation of the said Potrero, subject to the measurement to be made of the ejidos of San Francisco, and to the following conditions." Here, then, a concession of something is made in the name of the Mexican Nation. Some rights, it is clear, supposing the Governor had the right to confer the authority to make this grant, which is not denied, were conferred on the grantees by this instrument. What were the rights thus conferred? Does the language of this grant admit of the slight-

est doubt on this subject? The rights thus conferred were the rights to occupy the Potrero.

How long was that occupation to continue, and subject to what conditions? In what manner could the rights thus conferred be lost? The grant goes on to tell us: In case these lands should be measured off as the ejidos of San Francisco, these rights would be determined or diminished by their own limitation. No other bound or limit to that right of occupation, excepting this possibility, that these lands would be required for a public purpose, weich possibility was suggested by the Secretary of State as the only reason why the grantees should not have the estate, absolute in fee, and which is the only reason assigned in the decree by the Governor why he did not make that estate absolute, that can be found in this grant. But there are certain conditions attached to this grant to be performed by the grantees, a violation of which conditions will impose upon them the penalty of losing the rights conferred by this instrument. Rights, therefore, were conferred by this instrument—rights which could be forfeited provided certain conditions were not complied with—and rights which could not be forfeited; that is, could not be taken away from the grantees so long as these csnditions were complied with.

For we take it, it will be conceded that a grant imposing certain express conditions under the penalty of ferfeiture, can not be determined at the mere caprice of the grantor, but can only be put an end to in consequence of the non-fulfillment of

the conditions. Now, these conditions are, in the first place, that the grantees shall not, by any title, sell or alienate the property to the prejudice of any property the establishment of San Francisco may have. In other words, the title was a vendible title, provided that no sale or alienation should prevent the possibility of the establishment of San Francisco claiming these lands at some future time, in case it wanted them as ejidos. We are aware that this meaning which we have given to this condition has been disputed, and it is not necessary for our argument to insist on the meaning which we have given it, excepting by way of its illustration. We admit that the original language is somewhat vague. But we insist that our translation is the correct one, and contains the true sense given to this condition by the grantor. Translated literally the words of this condition are as follows: "they shall not by no title sell it nor alienate it without prejudicing some property which the establishment of San Francisco may have." Our adversaries contend that this is an absolute restriction on the right to sell or alienate. But it is clear if this had been the purpose of the grantor he would have stopped after the word "alienate it;" for evidently the words "without prejudicing some property which the establishment of San Francisco may have," would have been entirely superflous. The language "without prejudicing some property which the establishment of San Francisco may have," evidently contains the reasons why any restriction

whatever is put on the right to alienate. And this reason would be entirely satisfied by giving to the grantees the right to sell or alienate, provided their vendees should hold the land subject to the same right of the measurement of the ejidos, to which it was subjected in the hands of the original grantees. It is clear that this is not an absolute prohibition of the right to sell and alienate, but only a prohibition against doing any act to the prejudice of the establishment of San Francisco. But even if we should concede, as contended for by our adversaries, that this was a restriction on the right to sell or alienate, when would such restriction cease? The answer is obvious: whatever restriction to sell or alienate is put on this land, is imposed because of some possible prejudice that such sale or alienation may work to some property of the establishment of San Francisco may hereafter acquire in this property. For it is clear that the conditions do not refer to any rights that the establishment of San Francisco actually did have at the date of the grant in that land, for both Jimeno and Hinckley did positively state that at that time the establishment of San Francisco did have no rights in that land. Nor has the establishment of San Francisco acquired any rights in that land since as ejidos, and it has now become impossible that it ever should. Any restriction, therefore, on the right to sell or alienate caused by the possibslity that thereby injury might be done to rights which only existed in possibility, would cease as soon as it became impossible that any rights could ever exist to be injured.

The second condition is as follows: "They shall not obstruct the crossings, highways and servitudes devoting it to the cultivation and stock they propose to introduce; but in one year, at farthest, it must be occupied." It is evident that the language of the condition is applicable to a long continuing estate. Something that the grantees involved will be entitled to, even though they let eleven months pass without availing themselves of it. Even if on the last day of the year they went into occupation of that land, they would save their rights to that estate granted by this document. This condition is entirely incompatible with the idea of an estate determinable at the caprice of the grantor, and becomes simply absurd when used in a grant, which, according to the ideas of our opponent, conveys no rights at all.

The third article in this grant provides that if the grantees violate these conditions they will lose their right to this provissional concession, which is delivered to the interested parties for their security, and other ends. Here we have a declaration that these parties are *interested* in this land. How could they be unless they had some estate therein? That the title is delivered them for their *security*. How could a title be *security* to them unless it proved on its face that rights were thereby conveyed. That if they violate these conditions they will lose their rights to this provissional concession. What possible meaning can be given to a provision like this, on the theory of our antagonists, that either that this grant con-

veyed no rights, or else the rights that it did convey were revocable at the caprice of the grantor. Is it not absurd to speak of losing rights in consequence of the violation of conditions when there are no rights to lose? When, even if the conditions are complied with, there are no rights to retain!

We have before said, that the object of recording Mexican grants was to show to the world what lands, by having been granted, were no longer open to settlement, and the operation of the colonization laws. Jimeno himself, the Secretary, who suggested this possibility of this land being wanted as ejidos, as the only reason why they should not be absolutely granted, kept an official Index, the object of which is clearly indicated by its title. It was called an "Index of the lands adjudicated, and persons to whom they have been conceded;" and all concessions of lands were regularly numbered in this Index in the order in which they were granted. Now in this Index, in its regular order, this concession is inserted, under its proper number, in the same manner in which any concession under the colonization law was. Still further —in the official book called the "Toma de Razon," an official book in which were set down the concession of lands adjudicated by the Mexican Government, this grant was regularly recorded as a full grant of the land, in che following language:

"226. Don Fran'co y Ramon Haro, on the first of May—

A title for the land called the Potrero was given to them, in extent one-half league."

We have thus finished our analysis of the documents issued by the Mexican Government, on which we rest our claim of title. These facts are established conclusively by them:

First. That the De Haros petitioned under the colonization law for this land.

Second. That the Chief Magistrate of San Francisco reported to the Government that these lands were vacant, unowned and unclaimed.

Third. That the Governor felt it his duty, in the exercise of his official discretion, to make the grant, as petitioned for, provided there was no legal objection thereto, as is shown by his reference to the Secretary of State.

Fourth. That the Secretary of State, on being referred to, corroborated the report of the Chief Magistrate of San Francisco, by declaring that these lands were vacant, unowned and unclaimed, and raised but one objection to a compliance with the prayer of the petitioners, and that objection was founded upon a bare possibility of the happening of two improbable events, neither of which as a matter of fact has ever taken place—first, that the establishment of San Francisco should ever want ejidos of any kind; second, the possibility that if the establishment of San Francisco ever did want ejidos these should be the lands selected.

Fifth. That the Secretary of State recommended to the Governor that a concession should be

made to the petitioners of this land, to the extent that such concession could be made, so as not to interfere with the possibility of these lands being wanted at some future time for public purposes—the necessity for which did not exist at the time of the making of this grant.

Sixth. That the Governor adopted the report of the Secretary, complied with the prayer of the petitioners so far as he could consistently with that report, made a grant to the petitioners professedly under the colonization law, ordered that a title should issue to them, that that title should be recorded as a title from the Government, and that the chief of the establishment of San Francisco should be officially notified of all these facts.

Seventh. That in accordance with the petition, reports of the Chief Magistrate of San Francisco, and the Secretary of State, and in the solemn name of the Mexican Nation, and clothed with all the formalities of a solemn Government grant, a patent or title from the Government was issued to these petitioners.

Eighth. That this grant contained conditions for the non-compliance with which all rights acquired thereunder were to be forfeited, absolutely incompatible and irreconcileable with the idea that those rights could be wrested from the petitioners at the arbitrary caprice of the grantor, or of any one else.

Ninth. That the sole bound, term or limit of the right given to the petitioners to occupy these lands, was the possible happening of a future event

which has never yet happened—the measurement off of these lands as the ejidos of the establishment of San Francisco—a possibility which, while it was on the one hand the sole objection to the granting these lands in absolute fee, was, on the other hand, as would naturally be inferred, the sole limit to the rights conferred by the grant.

Tenth. That the very Secretary who raised this single objection, immediately upon the issuance of the grant, inserted the concession in the regular Index of the lands adjudicated and persons to whom they had been conceded; thereby showing his opinion of the character of the grant.

Eleventh. That in accordance with the decree of the Governor, this grant was regularly recorded by the proper authorities in the book appropriated to the record of the concession of lands adjudicated by the authority of the Mexican Nation, as a title granted to the De Haros of the land called the Potrero, with its limits defined; and from all these facts we draw the simple conclusion, which we claim to be inevitable, that the Governor of the Californias did what he would naturally do under the circumstances; that he complied with the prayer of the petitioners so far as he could in view of the single objection that was raised; that he granted them the use and occupation of that land; that the right could never be taken away from them except by the happening of an event which never has happened, and never can happen; or the violation of conditions which have all been complied with.

But if the concession did not confer upon the De Haros the right to occupy until this condition happened, let us see what possible other construction can be given to the instrument. It can evidently only be construed as a license to occupy these lands at the caprice of the Government; or, in other words, a license determinable at will. Even supposing that to be the construction, by what right, when, how, has that license been revoked? The Government of Mexico did not revoke it. On the contrary, the evidence shows conclusively that the heirs of the original claimants were in undisputed possession of their tract of land at the time of the treaty of Gaudalupe Hidalgo, and the right to revoke such license (if it ever existed) passed to the United States, to be exercised, if at all, by the Legislature, and not by the judiciary. For, even conceding this right to be revocable at the will of the government, that will must be expressed, and cannot be implied. And by what authority can it be pretended the Courts of the United States have been clothed with the power to exercise it?

Congress, by two successive Acts, (the Act ratifying the Vanness Ordinances, and the Act of March 8, 1866,) so far from revoking any permission to occupy, has granted *these* lands to the persons who had the *right* of occupancy. What stronger right of occupation can be imagined than one resting upon an unrevoked license of the highest department of the government—the source of all titles? We contend, then, upon this branch

of the case, that, conceding all that our opponents can by any possibility claim, that this document only conferred a license to maintain exclusive possession at the caprice of the Mexican Government, or by its successor, the United States Government, such revocation must be evidenced by some positive act of one of those Governments, and the Courts have no more power to revoke this license than it would have to create it; and Congress, so far from having revoked this license, has declared that the right to occupy should henceforth be the *true* and absolute title to the land, depending solely for its inception to ripen into a perfect title upon a prior right of occupancy. But, so far are we from conceding that the instrument under which we claim conferred only a license, revocable at the will of the grantor, that we assert such a construction would be entirely incompatible with the history of the grant—its language, conditions, evident meaning, and the circumstances of the country, and the inhabitants thereof, at the time it was made. When the grant was issued, California was a sparsely settled country, without fences, no obstruction to prevent the herds and flocks from roaming in an untamed state over its entire surface. All the inhabitants without grants might be said to be tenants at will of the Government lands, and the Government officials would have no more thought of disturbing them in the possession of the ungranted portions, than our Government now thinks of expelling pre-emptors from the public lands. Certainly it would never have occurred to

any Mexican citizen to ask, nor to any Governor to grant, a right to use lands for so long as the Governor should so will. Even in the most populous countries, it would hardly suggest itself to any private person to put a license to occupy land in writing, provided such license were revocable at will. Such a license would naturally be granted by word of mouth, or by occupation without objection. But here in the case of a private individual granting the right to use the most valuable property at *his own* pleasure, it would be an evident absurdity to put such license in the form of a solemn document, clothe it with legal formalities, give notice thereof to the world by registration, that he has done what simply allowed another to use his estate until he chooses to put him off—it may be the next hour; for a power of revocation at will gives no fixed time to the licensee. But it is simply ludicrous to suppose that, in the early times of California, a Secretary of State would seriously and officially say to his superior officer: "I, in my official capacity, recommend that you permit these young men to remain on this barren spot until you choose to expel them"; and that the Governor, invoking the authority of his nation and its solemn laws passed for the purpose of encouraging settlement and immigration to the country, and using all his official titles, should say to a petitioner for a grant, "the Mexican nation permits you, Señor, to put and keep cattle on this worthless pasture until it chooses to turn you out. Let this inestimable privilege be put in the form

of a patent, and recorded in the governmental archives, to the end that all people may be apprised of the great liberality of, and the great inducements held out by, the nation to encourage settlement and agriculture. And let a notice that this great event has happened, be transmitted to the authorities of the place where the land is situate. But it is my official duty to tell you that though you get no rights by the solemn instrument I now give you for "your security," you will lose them all if you violate certain enumerated conditions. It is true, that, although you may faithfully observe and keep those conditions, I have still the right to turn you out of the possession which I authorize you to take. It is true, a compliance with those conditions will give you no right to stay there for any longer period than my will. It is my further duty to inform you, that, although I have the right to grant this land, in the next hour, to any person I choose, or revoke the permission I now give you, the next moment, you will loose all your rights if you do not take possession within one year, and if you do take possession within that period, and occupy that land with all your cattle, I reserve to the nation the power of having those cattle driven from the land just as soon as you have complied with all the conditions imposed on you; and the reason why I give you this license revocable at will, instead of the absolute fee you asked for, is because no person owns those lands nor claims them; they are vacant; there is no possible obstacle to your having them, except the

fact that it is barely possible that, in some futuer age, the establishment of San Francisco may want these lands as pleasure grounds; it is very clear that they can never be used as such."

We respectfully submit, that we have not caricatured the theory of our opponents when they contend that this solemn, recorded document, issued in the name of the Mexican nation, filled with onerous conditions, contains nothing more than a mere license to occupy at will a small, worthless, vacant tract of land.

But if, on the other hand, it be admitted, as it must be, that this is something more than a mere license to occupy at will, what other limit or restriction on the right of occupancy can be imagined than the one we have suggested, viz.: the selection, measurement and appropriation of these lands as the ejidos of San Francisco? Clearly, none other can be determined from the face of the grant. It is the limit fixed by the Secretary of State in his recommendation to the Governor, adopted by the latter, and expressed in the documents given to the interested parties for their security, and beyond that it is the limit recognized and fixed by the learned Judge of the District Court in his opinion. And now we ask, (conceding this to be the true construction of this grant,) what estate was thereby created? Suppose Congress should grant a certain island to A and his heirs until it should be required as a site for a lighthouse, would it not clearly be a grant of that island, subject to the title

being defeated by the proper department of the government selecting it for a lighthouse; in other words, a grant on condition subsequent. And if by any convulsion of nature, it should be rendered impossible that such island should be ever selected for a light house site, would not the title as against all the world become absolute in the grantees? And what difference would it make if the language in which such a grant were expressed was, the land is granted, or permission to use and occupy the land is granted, or a license is given to use and occupy the land. Would not the law which construes words so as to get at the real intent of the party using the same, see that the grantor intended to give the grantee all the beneficial rights of property in the subject of the grant, determinable in a possible event?

Again, suppose that the grant was provisional to occupy until it shall be determined that the premises are not wanted to erect thereon a monestary, and the Supreme Government should, while the provisional grantee remained in possession, enact that no monestary should be established within its territory, thus rendering it impossible for that determination to be made. The grantee has violated no condition, has performed every thing incumbent on him, had no voice or will in, and no control over, the policy of the government upon the subject of monestaries. Could it be successfully maintained that the instant the government enacted its prohibition, he lost his right of occupancy?

The admeasurement, selection and assignment of ejidos was a part of the incidents of establishing a pueblo peculiar to Spanish and Mexican countries—a system totally at variance with the manners, customs and laws of Americans. It is certain Congress has not decided, and will not decide, that the lands petitioned for by the de Haros may be set apart as ejidos; and because the object of the reservation, or rather the right to assign them as ejidos, can never be exercised, are we to be told we, thereby, have not the right to occupy?

We think we have established affirmatively from an analysis of the petition, report of the Chief Magistrate of San Francisco, the reference by the Governor to the Secretary of State for information, the report and recommendation to the Governor by the Secretary, the decree of the supreme power made professedly in conformity to the petition, report, recommendation and the power vested in the Governor by the colonization laws, of the title or patent issued pursuant to such decree, that the grant to the de Haros was an *alienable right to the use and occupation of the potrero* —which right could only be terminated by the possible happening of a future event, or forfeited by a failure to comply with some one of the conditions attached to it. We have shown that even if the construction contended for by our adversaries were the true one, and this grant simply gave to the petitioners a license to occupy, revocable at will, that still it would not follow that this court

has the power to divest such license; 1st, because such revocation could only be by a positive Legislative act; 2d, because Congress so far from revoking any right of occupancy of lands in San Francisco, granted by the Mexican nation, has, as matter of fact, enlarged such rights of occupancy into perfect titles. And we have further demonstrated, as we think, that the theory of our adversaries, that this was a license revocable at will, is simply absurd; that such theory is directly contradicted by the situation and circumstances of the country at the time of the grant; by the absence of all motive to make or accept such a license; by the reports of the officials; by the formalities with which the grant was made; by the conditions and restrictions imposed upon it; and by the official archives wherein it is indexed and recorded as a grant made under and by virtue of the colonization laws; and by the fact that no power is reserved in said grant to concede the lands to any other person or community, except to the establishment of San Francisco, and that for the purpose of using the same as ejidos. We have further shown that if this theory of our antagonist, that the only interest created by this grant was a license revocable at will, was shown to be unsound; that then there can be no other possible construction given to this grant than the construction we contend for, viz.: that the rights granted by this decree and patent are of such a nature as to be divested only by the happening of the event by

which they are limited, or by a forfeiture or a violation of some one of the conditions.

Assuming, then, to have established our theory of the proper construction of this grant, we pass now to the questions: First, Has this event taken place on the happening of which these rights of occupancy were, by the term of the grant, to cease? And, Secondly, Has that event become impossible —if so, when, and in what manner?

As to the first quere, it is clear that we might rest upon the fact that the Government has not shown affirmatively that any such event has happened—for it is evident it is incumbent on one who claims that an estate is divested by the happening of a condition subsequent, by which it is limited, to show affirmatively that such event has happened, which causes the estate to cease. But the evidence in the case at bar shows conclusively that these lands were never measured off as ejidos to the establishment of San Francisco—and that they were occupied by the heirs of the De Haros up to and long after the cession of California to the United States, and even up to the present time.

To the second question, we answer, that it became impossible for such event to happen, the moment California was ceded to the United States, for the reason *that then* the objects and purposes of the reservation, and the system of measuring ejidos, ceased, with the change of proprietorship of the *territory*. It would be sufficient for us to rest here, but we go farther, and contend that, whereas, under

the Mexican system, in pastoral countries it was deemed of paramount interest to the public that ejidos, or pleasure lands, should be reserved for public use, under the American system the demands of commerce require that lands in the vicinity of a seaport be appropriated to private business, and held in private proprietorship. Recognizing this policy, the Congress of the United States has twice enacted that the lands forming the peninsula on which San Francisco now stands, all of which under Mexico might possibly have become ejidos, should be granted in fee to the individuals, who, as against all but the United States, had the right to occupy the same, to the extent of the actual right of occupation. These acts recognize and firmly establish the proposition, that these lands can never be used as ejidos. Indeed, by such legislation, Congress has deprived itself of the power to provide for the selection and assignment thereof as ejidos. and we presume it will be admitted, that if these lands were now to be offered to the City of San Francisco, to be used as ejidos, the corporate powers would decline to accept with the restriction that they shall only be used as such, for the necessities of commerce imperatively demand that they shall be owned by individuals, and devoted to the use of trade, manufactures, &c., while they would be useless and valueless for the common purposes of the inhabitants of that city.

This Court determined, in United States v. Ber-

nal, that it was competent for the Governor of California to grant lands in fee within the four leagues ceded or appropriated to the Pueblo of San Francisco, (see E. O. Brown v. City and County of San Francisco, 16th Cal. R., 451;) hence it follows that the grant to the De Haros violated no provision of the colonization laws. This case also exposes the fallacy of the reasoning of the learned Judge of the Court below, when he says, "in the case at bar the lands solicited would evidently fall within the ejidos of the Pueblo whenever they should be measured," evidently confounding the ejidos of the Pueblo, or lands reserved from private ownership, so to speak, for the pleasure of the inhabitants, with the lands pertaining to the public to be allotted to the puebladores as building lots, sites for mercantile establishments, &c. In the same connection, the learned Judge says, "this land had even before the date of the petition been enclosed by a wall, built by the fathers of the Mission." The evident impression which the District Court would have drawn from this passage of the opinion, that at the date of the grant the establishment of the Mission claimed some interest in this land, is negatived both by the report of Hinckley, (Chief Magistrate of San Francisco,) by that of Jimeno, Secretary of State, both of whom certify positively and explicitly that the lands solicited were vacant, unowned and unclaimed by any community or private person. This was one of the questions referred to them to report officially upon, and the Governor adjudged their report to be true.

Again, the learned Judge says, "the grant was refused, but a permission to occupy temporarily was given, not as in Alviso's case, while further proceedings for the perfection of the title were pending, but merely until the ejidos should be measured." We would respectfully ask in what manner (conceding the learned Judge's construction of our instrument to be correct,) a permission to occupy temporarily until the ejidos should be measured, is to terminate, before the ejidos are measured, so as to include these lands?

The Judge of the District Court, in his opinion, seems to lay stress upon the fact that this land was not inhabited, or built upon, prior to the cession of California to the United States, by the grantees. It seems to us a sufficient answer to this objection to say that the grantees, in their petition to the Governor, stated frankly the use to which they intended to put this land, viz.: the pasturage of stock; that the grant imposed as a condition that they should devote it to such purpose; that the land was, for a California rancho, a very small tract of land; and that the grantees resided with their parents near to it, they having no families, and no use for a separate house; and the possession which they did take of the land was an actual, exclusive, *bona fide* possession.

The District Judge, in his opinion, comments upon the case of the United States v. Alviso (23 How., 318,) and seems to think that case was stronger in favor of the claimant than the case at bar. We respectfully dissent from that conclusion.

In the Alviso case, there was simply a permission to occupy the land while the proceedings to obtain a titulo were pending, and a possession of fourteen years. In that case, it might well have been urged against the claimant that his permission to occupy was only until he should acquire a full title; that it was incumbent on him to take the necessary steps to obtain such title; that he was guilty of laches in not so doing; and his permission to occupy expired by its own limitation when either his petition for a title should be rejected, or when, from any cause, it became impossible for him to obtain such title. For it will be seen that his permission to occupy was *only* during the time while the proceedings for the perfection of his title should be pending, and the Government of the United States might well have said to him, Your proceedings to perfect title are no longer pending, for the Government of Mexico has conveyed the title to us, and the term during which you were permitted to occupy has ceased by its own limitation. Since your proceedings to perfect or secure a title are no longer pending, you have, therefore, neither title or right longer to occupy. But in the case at bar, the permission to occupy was to last until a certain improbable event should happen, which never has, and never can happen. So that while, in the Alviso case, this permission to occupy was to continue only while certain proceedings were pending which at the cession of California ceased altogether; in the case at bar, the *term* for which the permission to occupy was given still

continues. In the Alviso case, the event which was to terminate the permission to occupy has happened, viz.: the non-pendency of the proceedings for the perfection of title. In the case at bar, the event which alone can terminate the permission to occupy has not transpired. It is true, in the Alviso case, there was an occupation for fourteen years, or from the date of the permission. In the case at bar, there was a continuous exclusive permission from the date of the permission (in 1844) down to the date of the petition, (March 16th, 1852,) and long after—a period of more than eight years; so that, so far as permission is concerned, the claimants in this case invoke its aid, and claim that it has been as long and continuous as the date of the permission given to them would permit.

The District Judge says, the case differs from the case at bar in several important particulars. First, he says the lands were situate on the shores of the ocean, at a distance of 20 to 30 miles from the Mission of San Francisco de Asis. What difference the distance from that Mission could possibly make, so long as that Mission claimed no interest in either, we cannot understand, and it is certain from the reports of Hinckley and Jimeno that the Mission did not claim the Potrero, but the same was vacant and unclaimed. The geography of the state demonstrates that the Alviso tract was as adjacent to the far-famed Mission of Santa Clara as the Potrero to the ex-Mission of San Francisco.

Again he says, "it, *i. e.* the land in Alviso's case, was vacant, and was not recognized as the property

of the Mission, or any private individual." In stating this as a difference between the Alviso case and the case at bar, the Judge must have forgotten the strong language of Hinckley, (Chief Magistrate of San Francisco,) when he says, "I give a report in relation to the place petitioned for, and say, that there are no pretendants or claimants up to the present date, and it is not occupied by any community or person whatever." Again, the Judge says, "the propriety of granting it, (the Alviso land,) was recognized by the Prefect, who permitted the claimants to occupy it, as shown by the report to the Administrator to whom the Governor referred the petition." So in the case under consideration. We say, the propriety of granting *this* land was recognized by the Governor and Secretary of State, until the land should be wanted as the ejidos of the establishment of San Francisco.

The 4th difference which the learned Judge finds between the two cases is one we have already commented upon as being a difference entirely favorable to the cass at bar; the judge says, the right of occupation in that case was in terms solicited by the claimant, and granted by the Governor, while the proceedings for the perfection of the title were pending. It seems to us it is a natural inference from this, that when the proceedings for the perfection of title were no longer pending, the right of occupation ceased by its own limitation. While in the case at bar, the event which was to bring about a termination of the rights to occupy has not happened. We contend, therefore,

that the Alviso case goes far beyond the necessities of the case now presented. In both there was a vacant unclaimed tract of land, a *bona fide* continuing possession from the date of the permission to occupy. But there is a marked difference between the two, in this: that while in the Alviso case the event which all parties contemplated should put an end to the permission to occupy had happened when the *claim* was presented for confirmation. No one will pretend that the Potrero has ever been measured off as the ejidos of the establishment of San Francisco, or that it ever can be.

We now ask, if less than all of this Potrero had been admeasured as ejidos of the establishment of San Francisco—or other adjacent lands had been so measured—in the one case would not the De Haros become vested with, and have a perfect title to the remainder, and in the other to the whole of the Potrero? Is it possible that the Mexican nation would have deprived them of it except for the one purpose, *i. e.* ejidos? Did they not have on the change of sovereignty such an estate as is alluded to by this Court, (17 How., 557,) in the following language: "For if at the time the sovereignty of the country passed to the United States any interest, legal or equitable, remained vested in Alvorado or his assigns, the United States are bound in good faith to uphold and protect it." We put this simple question to the Court, which *resumes* our entire argument, if this land is taken away from the claimants before it is wanted for ejidos for the establishment of San Francisco, wil[l]

good faith be kept with them, or the Mexican nation?

JNO. B. FELTON,
Of Counsel.

UNITED STATES.

JOSEFA DE HARO ET AL.,
Appellants.

vs.

THE UNITED STATES,
Respondent.

ADDITIONAL ARGUMENT FOR APPELLANT.

I.

We think that the error into which the District Court has fallen, in this case, arises from mistaking the issue which was properly before the Court.

In our view, the only question was as to the validity of the claim, and that this is a question of power and jurisdiction; and, if this position is correct, then the Court had no right to determine as to the legal effect and operation of the title under which the appellants claimed.

The jurisdiction is special and limited; it is not among the powers of a common-law Court of general jurisdiction; it is conferred by the act of March 3d, 1851, alone, and must be gov-

erned by the rigid rules which are always applied to Courts of inferior jurisdiction. These rules are familiar. Blackstone says: "Particular jurisdictions derogating from the general jurisdiction of the Courts of common law are ever taken strictly, and cannot be extended further than the express letter of their privileges will warrant."

In Jones *vs.* Reed, 1 Johns. Cases, 20, the Court say: "It is a clear and salutary principle that inferior jurisdictions not proceeding according to the course of common law, *are confined strictly to the authority given them.* They can take nothing by implication."

In the case of Pringle *vs.* Carter, 1 Hill. Soca. R., the Court say: "It is a well established rule that, when a tribunal unknown to the common law is established by statute, it is to be confined strictly to the powers conferred; and I take it to be equally clear that, where a new jurisdiction is given to, or a remedy afforded by a common-law Court, neither the jurisdiction or remedy is to be extended beyond the legislative grant."

See also Foot *vs.* Stevens, 17 Wend. R., 483.

Yates *vs.* Landsing, 9 Johns. R., 437.

Judge Hoffman, whose judgment is now under review, has distinctly recognized this principle.

In the case of Yturbide *vs.* United States, 1 Hoffman's R., 277, he says: "The Court has a special and limited jurisdiction derived from the statute above, and to be exercised like the jurisdiction of an inferior Court only *in the manner and to the extent prescribed by the statute.*"

Now the statute referred to in the last cited case is the Act of March 3, 1851, "to ascertain and settle the private land claims in the State of California," and the only jurisdiction it confers, as we insist, is to determine the "VALIDITY" of the claim.

Section 8 makes it the duty of the Commissioners "*to decide upon the validity of the said claim.*"

Section 9 provides an appeal to the District Court, the petition for which must pray the Court "*to decide on the validity* of such claim," and the District Attorney shall "set forth the grounds on which the said claim is alleged to be INVALID."

Section 11 provides that the Commissioners "and the District and Supreme Courts in deciding on the *validity* of any claim," etc.

Section 13 provides that all lands "which shall be finally decided to be *invalid* by the District or Supreme Courts" shall be deemed parts of the public domain.

The Courts having jurisdiction of these land claims have all acted upon this theory in their decrees—the judgment being invariably "that the said claim is *valid* or *invalid.*"

It would seem to follow then, in the present case, that if the claimants have any rights at all which are appreciable by the human understanding, and consequently by Courts of Justice, their claims to such rights ought to be decreed to be valid and confirmed. Well, the District Court has discovered and distinctly announced that the claimants have rights. The Judge says (Transcript, page 189): "But in this case the permission is given to occupy only until an assignment of the land to the Pueblo is effected."

Is not this a right of possession? and is not such a right regarded and appreciated by the law as within the reach of its protecting power? Must it be that because the parties did not get all they desired they should not have what they did get? Is the poverty of the gift to be regarded and used as the means to take the gift away? or did the District Court reject the claim upon the maxium "de minimis lex non curat"?

Following the idea of the District Judge as to the character of the rights conferred, we not only have the right of possession, but we had it conferred in the most solemn manner known to the law and the regulations of the government; and not only so, it was given to us to last up to the happening of a certain named event. Now it is a familiar principle in our system of jurisprudence, (and we think we may add in all others) that this naked possession may by the lapse of

time ripen into a perfect title; much more easily may it do so under color of title; and so if the possession is held under the solemn sanction of the Government up to the happening of a given event, has not the tenant the right to take the chance of the non-occurrence of the event and the consequent result of his right of possession ripening into a perfect title? And are these present rights, and the legitimate chances growing out of them of future and more extensive rights to be accounted nothing? Is there here (even upon the theory of the District Judge) no property which is protected by the treaty of Queretaro? Is there no substantial interest worthy of confirmation although held to be valid? Is every thing to be rejected which is not a grant in fee simple? Has the Court jurisdiction to determine the character of the estate granted, to say whether it is a fee simple or fee conditional, a tenancy at will or upon condition or for years, and because it finds it to be a lesser estate than it thinks a man ought to own, reject it although it is valid?

We think the Act of Congress answers all these questions in our favor. Indeed the language used in the title to the act, very clearly demonstrates that the intention was broad enough to cover every sort of claim—"An Act to ascertain and settle the private land claims," the last word having a signification large enough to cover every sort of right to land.

Prigg vs. Pennsylvania, 16 Peters R 615.

So in the language of the 8th section "That each and every person *claiming* lands in California by virtue of ANY RIGHT or title derived from the Spanish or Mexican Government shall present," &c. The Court will here observe that the term "any right" is used disjunctively from "title," and consequently, according to sound rules of interpretation, must be supposed to cover other cases than such as have "*title*:" and it must further be granted that if we have some *right*, as the Judge below has discovered, we certainly must be provided for under the phrase "any right."

But it has been objected, that if, as the District Court decided we have only the right of possession, the "license to occupy" which is a less estate than a fee, and we obtained a confirmation of our claim and a resulting survey and patent, we would be forcing from the Government under the machinery of the Act of March 3, 1851, a grant in fee to which we are not entitled.

We answer that the objection is sophistical, and results from a lame apprehension of the provisions of the Act of Congress. According to our view no such result can follow. Under the Act the *validity* of the claim is to be ascertained, and its confirmation follows. Confirmation of what? Anything more than the claim upon its face authorizes? this is absurd. So there is no provision as

to what shall be the nature or contents of the Patent. It must be as a matter of course that the Patent must run for what is confirmed—neither more nor less—and then under the 15th Section the decree and the Patent as far as they go, and for whatever they are worth, are conclusive between the United States and the Claimant.

To illustrate, suppose the case of a lease for forty years made by the Supreme Government of Mexico of ten leagues of land. Would not this be entitled to presentation before the Commissioners for confirmation under the Act of March 3d? and can it be supposed that if found valid and confirmed the consequences would be to derive a Patent for the fee instead of for the term? We assert that no such absurd and incongruous result can be obtained from any just and fair construction of the statute. And so we insist in this case that the claim being found valid for some kind of interest, if there was any doubt as to the quality of that interest, it ought at least to have been confirmed in the terms of the grant, it being dehors the jurisdiction to determine the character of the estate, and a matter totally immaterial to the Court as to whether the grantees would derive any benefit from the confirmation.

But we are driven to the necessity of replying to another illusion of the District Judge, supposed by him to be sustained by the authority he cites.

On page 187 of the record the opinion has the following clause: 16

"It is to be observed that the Supreme Court "did not in the case of Alviso, nor have they in "any other, decided that a mere permission to oc- "cupy, followed by actual occupation, is sufficient "to entitle the claimant to confirmation. The con- "trary doctrine is clearly announced in the case "of United States vs. Garcia, 22 How., 282."

We will first remark upon this clause that there is a misdescription of a fact. Our grant, even upon Judge Hoffman's theory, is something more and different than "a mere permission to occupy," and is, as he has elsewhere described it, "a permission to occupy until an assignment of the land of the Pueblo is effected;" it should be rather "subject to the measurement of the ejidos of the establishment."

We make this correction because it helps us in a material degree to show what a very wide difference there is between this case and the case he cites.

The rejection of the claim in the Garcia case may be maintained upon the ground that there was no claim at all, and, therefore, that the pretense of one which was set up was invalid, and consequently rejected.

Garcia, it seems from the report of the case, applied to Micheltorena for a passport to penetrate the northern coast with the object of locating a tract of land of eight or nine leagues. The passport is granted, and there is added to it by the

courtesy of the Governor the following sentence:

"If you should happen to select any tract of land you are empowered to occupy it with your said property, and to take possession of it while the usual procedure is being prosecuted presenting the requisite sketch."

This was in 1844. It appears that he did select a tract of land, occupied and improved it, but delayed to take any steps to obtain a title until 1846, when he addressed his petition to Governor Pico, who referred it to the Alcalde for the usual "informe," who reported that the land did not belong to any private individual—and there the proceedings ceased.

Here it is indisputable there was no grant whatever, nor was there a license to occupy, in its legal sense, contained in the paper signed by Micheltoreno, because there was no particular land to which the will of the

granting power was directed; and nothing asked for, except a mere passport to hunt for lands. The greatest effect which could be given to Micheltoreno's license, according to common-law views, would be to protect the party against liability as a trespasser upon the public domain, and nothing more.

We have said enough to show the entire dissimilarity between the case of Garcia and the case at bar; but, before we drop it, we will venture a remark which we trust will not be considered inappropriate, although not strictly in argument.

We have no hesitation in giving it as our deliberate view, that, notwithstanding the decision of this Court in the United States *vs.* Garcia, if it had been decided according to "the laws, usages, and customs of the Government from which the claim is derived—as is required by the act of March 3d, 1851—even Garcia would have had his claim confirmed. We have no doubt that, by his permission from Micheltoreno, his petition to

Pico, and the favorable report upon it, that he became invested, under Mexican law and usage, with an equity which that Government could not deprive him of at law and in good faith, and which would have ripened into a full title if the country had remained under that Government.

We have thus far, in this part of our argument, followed Judge Hoffman's theory of the "grant," that it was only "a license to occupy." We think we have shown that even then it was entitled to confirmation. That it was not of the inferior and worthless grade which the Judge assigns to it, is shown by a cursory view of the title papers. It was granted in the usual and solemn form observed in making grants in fee. It was granted upon consideration, to wit: the onerous duty of occupation within a year. The grant was delivered for their "security and other ends." The grantees were restrained from selling to the detriment of the Mission establishment, implying that otherwise they

had the right to sell. It was ordered to be duly entered.

All of these incidents are conclusive that even upon Judge Hoffman's hypothesis as to its inferiority, there was granted a right to the use and enjoyment of the property, of a valuable character, a right which the law ought to preserve, a right for the forfeiture of which no reason is given, which was to continue up to the happening of a certain event, which then might only diminish it, and which event has by the action of our Government become an impossibility.

So upon the finding of facts of the District Court, we say the claimants are entitled to judgment, but in the next part of our argument we will try to show that we have a grant in fee, and although we have said before that the Court had no jurisdiction to determine the legal effect of the grant—that is the nature of the estate which it creates—yet as the District Court has undertaken to do so, our duty to the case compels us to consider that question, and in doing so to make a brief

review of the evidence and incidents connected with the title of the claimants.

II.

THE authentic documents and record of the title in this case are

I. The Expediente.
II. Entry in Book "Toma de Razon."
III. Entry in the "Jimeno Index."
IV. The Patent, or Open Title.

The *first three* of these are the archived and record evidence. The *fourth* is the instrument delivered to the grantees "for their security and other uses." Together they constitute a "Synthetic Argument." They make an harmonious whole—the more harmonious, and complete as they are subjected to the severest analytical process.

I. The Expediente.

An *Expediente* may be more properly described as a *Process* or *Exhibit of Proceedings*. As adopted into the Mexican land system, an expediente means the original papers of the case, filed in their consecutive order. Such is the expediente in this case. Its commencement is a petition for the land; its conclusion, the *borrador*, or first draft—constituting the official original of the delivered *titulo* or patent.

Preliminarily, it is well to understand what a "petition" for a grant of land, in the Spanish and Mexican sense, signifies. It is in the nature of a *preclaim* to the tract indicated; and if it be the first claim, and the party be entitled to claim, and the land be subject to claim, then the fact of the petition operates instantly as a RIGHT. It stands in the same relation to the public domain of Mexico, as any first entry stands toward the public domain of the United States.

THE PETITION IN THIS CASE.

Prima facie this instrument meets all the requirements of the law. The parties were "Mexicans by birth." They were of that vicinage. They claimed the land for a lawful and beneficial use: namely—herding cattle.

They then show the second necessary fact—namely, that they possessed the means of carrying out the proposed object; they were the owners of the requisite stock.

They then state the necessary facts concerning the land—namely, that it is vacant, and adapted to the proposed use. That was all that was requisite to say. If such were the facts, the tract was subject to claim, and the equities of the petitioners—the *jus ad rem*—immediately attached.

Accompanying the Petition, are three other papers, namely:

1. *The Paternal assent or authorization.*—The petitioners, as stated in the petition, were minors,

and consequently still under the paternal dominion. They therefore present in due form a written consent and authorization of their father to the institution of the proceeding.

2. *Application of de Haro, senior, for an official report.*—Further to assist his sons, the elder de Haro, simultaneously with the petition, communicated the fact of it to the proper local officer—the First Alcalde of the jurisdiction—and asked of him a report to accompany the petition to the Governor. The object of this is explained in the application. It is, to anticipate and avoid delay, trouble and expense that would attend the delivery of the petition at the capital (Monterey,) and its re-transmission hither.

3. *Reply of the Alcalde.*—The Alcalde, or First Magistrate, was Mr. William Hinckley. He responded promptly and to the point. "For the reasons," (he says,)"set forth by the *pretendientie*," he gives information concerning the place asked for, namely, that there are no pretendientes, or counter claimants, (*reclamantes*) to it up to that date, and it was not occupied by any person or community whatever."

THE FIRST GUBERNATORIAL ACT.

Governor Micheltoreno, on receipt of the petition and documents, referred the whole to the Departmental Secretary to collate and report upon, taking further information if he should find it necessary.

JIMENO'S REPORT TO THE GOVERNOR.

The Secretary, in respect to the land, reports the essential facts, with emphasis, namely, that the Mission is absolutely destitute of effects, and by consequence of that fact the Potrero is *baldio* —vacant. The term *baldio* has its technical sense in Mexican agrarian law as well as its generic sense in the Spanish language. Derivatively, it has the same origin as *bald* in English. Technically, with reference to land, it implies such entire absence of appropriation as to invite the first lawful applicant to make entry upon it.

Notwithstanding all this, it is in the report of Jimeno that the interests adverse to the confirmation of this claim imagine that a vulnerable point is found. Jimeno reports all the facts requisite for granting the petition according to its terms; but then makes a *suggestion* by way of qualification. He suggests that as "to said establishment" (namely, the Mission establishment,) "ought to be designated its *egidos*, he thinks that the parties might meanwhile occupy the land by a *licencia provisional* "in order not to prejudice the community" (Mission Indians,) "or any private person." Those qualifying words, even if they had been carried into subsequent acts—which they were not—could have operated but very limitedly and very briefly, if at all, adversely to the immediate interests of the claimants, and not at all to the hindrance of their ultimate rights. Many

interpretations have been given to those words, and to the entire document in which they are contained, in order to produce a different impression. These will be noticed and corrected when we consider the document in a more general connection. At present, we remark on a single word. The verb *senalar*, does not mean "*assign*" as it is constantly and mischievously translated in this connection. Its meaning is: to designate—to point out—to measure—to *limit*. The *egidos* of the Mission establishment were not then, even in the hypothetical event suggested by Jimeno, to be assigned, but their *limits* to be ascertained and designated. The importance of this distinction will appear clearly in the course of this argument.

The Governor so far accepted Jimeno's report and suggestion as to direct (by the single word "*Conforme*") that proceedings go on accordingly. Hence followed

THE DECREE OF CONCESSION.

This paper, or a refusal of it, was a necessary sequence of the preceding acts. In effect, it is an order of the Governor, made "in view of" (*vista*) the facts and the law. It is the precursor of the next succeeding document—the *titulo* or patent. In the present case it is that, and something more. Besides the customary direction that the "corresponding despatch" (that is, the title,) be issued and, after registry, delivered to the parties, it also, in the same connection, directs that "a com-

munication be sent to the Superintendent (el encargado) of said establishment." That paper of course remained in the hands of the functionary to whom it was directed, and was not producible in the case, Its purport, however, is obvious enough. It could have been but an order for formal delivery of the premises—in effect, an order equivalent to juridical possession: an *act in pais.*

THE FIRST DRAFT (OFFICIAL ORIGINAL) OF THE TITLE.

This is the concluding act of the series of acts which make up the *Expediente.*

There are some distinctive points noticeable in this instrument; but we defer further remark upon them and it until we come to the consideration of the muniment of title delivered to the parties—the grant itself.

II. Entry in Book "Toma de Razon."

The archive volumes which have received this designation have been repeatedly recognized by the Supreme Court as authentic records of which the tribunals will take notice without their being produced in evidence.

The second volume still exists in the archives. It embraces the year in which this grant was issued, and in it the grant is accordingly noted precisely as other grants are. For the purpose of illustration we here give copies of four entries—that of the grant in this case and one preceding and two succeeding it—constituting a page of the volume :

225. Dⁿ Maccimo Martines en 1° de Mayo de 44.

Se le dio titulo en aumento del que poseia antiguamente en estencion de dos sitios de ganado mayor.

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226. Dⁿ Franᶜᵒ y Ramon Haro en 1° de Mayo.

Se les dio titulo del terreno nombrado el Potrero en estencion de medio sitio de ganado mayor.

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227. Dⁿ Franᶜᵒ Guerrero en 1° de Mayo de 1844.

Se le dio titulo del paraje nombrado—en estencion de tres cuartos de legua poco mas o menos.

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228. Dⁿ Franco. Arce en 12 de Mayo de 1844.

Se le dio titulo del paraje nombrado Santa Ysabel en estencion de cuatro sitios de ganado mayor poco mas o menos.

Which entries we translate as follows :

225. Don Francis Martinez, on 1st May, 1844. Title delivered to him in augmentation of that which he previously possessed in extent of two leagues square.

226. Don Francisco and Ramon Haro, on 1st May. Title delivered to them of the tract named el Potrero, in extent of one-half league square.

227. Don Francisco Guerrero, on 1st May, 1844. Title delivered to him of the place named, in extent of three-quarters of a league, little more or less.

228. Don Francisco Arce, on 12th May, 1844. Title delivered to him of the place named Santa Isabel, in extent of four square leagues, more or less.

III. Entry in Jimeno's Index.

The character of the Register, known as the *Jimeno Index*, is well understood. It is of unquestioned authority, and has been so recognized by the Supreme Court of the United States. (*United States* vs. *Teschemacher*, 22 H. 405. *Romero* vs. *United States*, 1 Wallace, 742.)

In that Index the claim of the brothers De Haro, for the Potrero, is entered as "*Concedido*"—entered precisely as other claims that were favorably acted upon were entered.

For the purpose of illustration, we give here three entries from the Index, namely, that of the case at bar, and the one preceding, and the one succeeding it:

Extracts from Jimeno's Index.

Arroya Chico	Condª	a Dⁿ Edwardo A. Farwell	359
Potrero de San Franᶜᵒ	Concedᵒ	a Dⁿ Francᵒ y Ramon de Haro	360
Canada de los Adras	Concedᵒ	a Dⁿ Domingo Felis	361

Says the Judge of the District Court:

"The *language of Jimeno* indicates with entire precision the nature of the rights intended to be conceded. He speaks of it not as a provisional grant, but as a provisional license to occupy land."

Now, if there be a difference in legal effect between a provisional license and a provisional grant in tne English language—a proposition by no means certain—it does not follow that the same difference exists in the Spanish. The Judge, however, supposes that there is a difference, and for present purpose we accept his conclusion. Nor have we any objection to the "language of Jimeno"—even under the supposition of such a difference—where that language appears in an authoratative form, as in the last citations, namely, the *Toma de Razon*, where he denominates our grant a "TITULO," and in his *Index*, where he denominates our claim as "CONCEDIDO." In his report on the petition and accompanying *informe* of Alcade Hinckley, he suggests a "provisional license," and in his memorandum at the foot of the grant he uses the same words. But of the *first*, it is sufficient to say that it was anterior to any rights "conceded," and that if the Secretary intended to recommend only a provisional license, (supposing that to be of less dignity than concession,) the Governor did not act on that recommendation, nor so limit the "rights conceded." Of the *second*, it is sufficient to say that it is a simple memorandum, or note of entry having been made, which cannot weigh against the entries themselves which remain as perpetual evidences of the transactions of the Government, and which the Supreme Court has held, as above

shown, (22 H. 405, I Wal., 742,) to be "public documents" which the tribunals will consult, "even if not made formal evidence."

In closing this examination of the archive evidence, we have only to add, that the archives of old California titles do not present in any case a more complete exhibit, or one more entirely satisfactory in respect of *bona fides*. The Judge of the District Court affirms this in emphatic language. "The expediente," he says "containing these various documents is found in the archives. The concession is noted in Jimeno's Index and the *Toma de Razon* for 1844. *No doubt of their genuineness can therefore be entertained.*"

IV. The Patent, or Open Title.

The conventional name of this paper is *el Titulo*, corresponding to our conventional name of *Patent*. Like the patent it emanates from the Government, and is delivered to the interested party "for his security."

Such is the general style of the titles, or *titulos* issued, and in this case it is not departed from. The title of the brothers de Haro is directed, as other titles to be issued, and, after registry, delivered to the interested parties "for their security."

"*Security*" *in what?*

The Judge of the District Court believes that it was "security" in a tenancy at will. Now "security" for a tenancy at will is an absurdity, and

contradiction of terms. For when a lessee, grantee or tenant, of whatever degree, obtains "security" from his lessor, landlord or grantor, the quality or tenancy at will necessarily ceases. When a holder has "security" in his hands, he can no longer be said to hold by the will, the caprice, or at the discretion of another.

We shall assume that the "security" given in the present case was not in the nature of a tenancy at will, or for anything so idle and nugatory, but "security" for a real and substantial right, entitled to assert itself then and now.

As against the title, it is next contended, that if it was not at will merely, it was still "provisional." This proposition, in the sense in which it is attempted to be interpreted, is not admitted. As respects the exact measurement and contents of the tract, it is true they were "provisional" or contingent upon another contingent measurement. The title itself is positive and in the present tense—self-acting.

In the opinion of the District Court, the "rights conceded" were to continue "only until "an assignment of the land to the Pueblo is "effected." What the Judge here intends to signify by the term "pueblo" is somewhat obscurre, since the word does not occur either in the grant, the expediente, or any other paper of record connected with the title. Nor are we much enlightened as to his meaning when he says:

"It must have been known to the Governor and "Jimeno that the lands *must eventually fall within the* "*four leagues* which was ordinarily assigned to Pueblos "as ejidos."

From the whole drift of the opinion, however, we suppose that the Judge intended the word "Pueblo" in the sense of and connection with the case of *The City* vs. *The United States*, then pending before his Honor, and since decided by Mr. Justice Field. If so, the opinion is contradicted by the entire tenor of the documentary evidence.

Another eminent authority, however, takes a like view with his Honor, but arrives at a different, and we think a juster conclusion. We refer to the learned commentator (understood to be General Halleck*) on the Opinion of the Supreme Court of the State in the case of *Hart* vs. *Burnett*. He says, (Note 13, p. 445 :)

"The provisional title in this case is undoubtedly "genuine, but it was made subject to the measurement "of the *ejidos of San Francisco*. The Governor and "Secretary were evidently aware of the existence of "*this Pueblo*, and its *right to lands*, but they *did not know* "the exact boundaries of *the four square leagues*, and "hence the condition was inserted, and the grant made "provisional. *Perhaps this provisional grant, with occu-* "*pation, constitute a good equitable claim for the land, and* "*if so it ought to be confirmed.*"

We concur with the learned author in his conclusion, but we cannot, in the face of the facts,

*Decisions of the Supreme Court of the State of California in the case of Hart vs. Burnett et al. Halliday vs. Frisbie. By a Member of the California Bar. San Francisco, 1860.

think that the Governor and Secretary had any reference whatever to "this Pueblo," or *its* "rights to land." Still less can we agree with him in imputing to the Governor and Secretary an entire ignorance of distances and localities around the harbor of San Francisco. It is difficult to treat arguments, come from whom they may, based on the supposition that Micheltorena and Jimeno did not know that any measurement whatever, of four leagues of circumjacent lands to "this Pueblo," would necessarily take within its compass both the Mission and Portrero: and that their action was in full view of that fact, whether that fact had any influence on their action or not. The counsel for the City in the Pueblo case, has not found himself driven to any such presumptions: nor have either of the high tribunals —the Supreme Court of the State or the United States Circuit Court—that have been successively called to pass directly upon the "Pueblo Question." The counsel for the City in referring to the Potrero expediente, says, with a frankness that we are glad to accord as a general characteristic of his able treatise*, that it has "little to do" with the Pueblo case, except as to show that whatever reservation the grant contains was with reference to the *Mission establishment*, or the possible subsequent erection of "an *Indian Pueblo* out of

* "The Colonial History of the City of San Francisco: being a Synthetic Argument in the District and Circuit Courts of the United States for the Northern District of California, for four square leagues of land claimed by that city. By JOHN W. DWINELL, Counsellor and Advocate. (Second Edition.) San Francisco. 1865."

the ruins of the Mission." We think that he errs in supposing that it was in favor of some "Indian Pueblo" yet possibly to be evoked from the Mission; but he is certainly right in ascribing the reservation exclusively to the locality of the Mission and in behalf of that establishment. If he is correct in supposing that any "Pueblo question" was connected with the thought which suggested the denomination "provisional," then we should look for the interpretation of that clause to the application of "Inhabitants" (not Indians) of the Mission Dolores to be "recognized as a Pueblo," which was pending before the Governor at precisely the same date (the last days of April, 1844,) as the petition of the brothers de Haro for the Potrero, and which application is noticed on the succeeding page (p. 76) of his able argument, with this exact statement of the truth: "This one docu-
"ment effectually establishes the fact that the
"Mission Dolores was not *that* Pueblo of San
"Francisco which was established in 1835."

So the Supreme Court of the State in the leading case of *Hart* vs. *Burnett*, wisely avoids the conclusion that would confound the establishment or ex-Mission, or any Pueblo—civilized, neophyte or mixed—that might be conjectured for its future state, with the Pueblo proper to whose land franchise the city claims the succession. (15 Cal. Rep., p. 530.) And a like discriminating judgment enlightens the opinion of the Circuit Court recently rendered by Mr. Justice Field, confirming the City claim.

We have hardly need, after these citations from the argument of the counsel for the City, to go further in refutation of the idea that the ejidos of which the measurement was to be provided for were those of "this pueblo." But an error once planted is so susceptible of propagation that we think proper to dwell further on this point.

In the first place it is evident that none of the parties to the transaction itself had a suspicion of any possible ulterior rights being involved other than in connection with the Mission. As before stated, the word "pueblo" does not occur in the whole course of proceedings, nor anything to suggest the idea of a "pueblo" in a technical sense of the word. The De Haros, in those of the papers in which they are the actors, speak only of the ex-Mission, evidently understanding it to be not only a distinct locality, but a distinct organization, or "establishment." The elder de Haro is so confident of not interfering, or rather so unconscious of a possibility of interfering with any "pueblo" rights, that his first step in advancing the interests of his sons is to communicate with the principal magistrate of the Pueblo proper.

Mr. Hinckley, being First Alcalde, must be supposed, if any one, to have in view the rights and interests of the Pueblo; but he shows himself as unconscious as the De Haros of any such rights or interests. He says that the place asked for has no other pretendants or claimants *up to that date;*

though this Pueblo, as has been judicially affirmed, had *at that date* been established, and its consequent territorial franchises accrued, for the space of fully nine years. He adds, moreover, that the place, beside having no other pretendants or claimants, was not occupied by any community or person whomsoever. We have already shown that the word "community" here may mean a pueblo holding property as a corporation aggregate, or a community holding property in common under a trust; and that Mr. Hinckley's report covers both cases.

Mr. Hinckley was not a person lacking in intelligence. His acts show him to have understood both his duties and his powers. As Alcalde he was accustomed to make grants of town lots; a considerable portion of the property of the city is now held through grants from him; the fees received by him in that way were the greater part of his perquisites of office. He certainly was not aware that the Pueblo, of which he was the first magistrate, and whose interests he was consequently bound to guard, had any concern in the matter then before him.

The Secretary adopts the representations of the petitioners, "accredited," as he says by the proper magistrate; and informs the Governor that "*the Mission*" now has no property of any kind, "*therefore*" the tract is vacant. Why "therefore?" Because the Mission does not occupy it, and has

nothing to occupy it with. What then? "*That* establishment"—the Mission, and no other—ought still to have its "ejidos," its goings out and its comings in, its egress and ingress, provided for. Nothing about the Pueblo, or a pueblo franchise, enters into his mind, or, at all events, not into his report.

We have thus, as we think, demonstrated beyond possible question that, whatever the nature or effect of what is held by the learned Judge to be especially the qualifying clause in the de Haro title, it had reference to the Mission establishment, and that only. Hence, we proceed to examine what was, in fact, the intended operation of that clause.

It has been assumed that the condition was not intended to refer to the title itself—that *that* was positive—but to the *limits* of the tract embraced in it; that is, it was made subject in respect of its boundaries, to other limits yet to be designated. Nothing is more common in California grants than a like provision; that is, that the grantee shall "subject himself to the measurement" of surrounding or coterminous tracts. In fact, it is a necessity, where grants are made of unsurveyed lands, and in the absence of surveyors. It is a necessity of the case that the younger shall be subjected to the elder riggt, and the law would so determine whether the express reservation were made or not. That is the sense of the provisional char-

acter attributed to the Potrero title. Its limits were subjected to the measurement of ejidos for the Mission, if ever their extent should be determined. We expect to show, not only this, but also that the extent and description of these ejidos have been since then juridically ascertained, and found not to interfere in any degree with the tract claimed by the brothers de Haro. We shall examine these points separately:

[A] The first of these propositions is so evident from the reading of the title itself, that it is difficult to understand how another interpretation to it has been given or attempted. Its exact words are: "Subjecting themselves (they, the grantees) "*to the measurement* to be made of the ejidos of "the establishment of San Francisco—('Sujetan- "dase *a la medicion* que se haga de los ejidos *del* "*establicimiento* de San Francisco.')"

"MEASUREMENT TO BE MADE."

Can words be simpler or clearer than these? There is not here even the verb "*señalar*" to fall back upon and interpret "*to assign.*" The Secretary suggests that the ejidos are to be "*señalado.*" But the Governor, in this last act—the instrument delivered to the grantees for their *resguardo* (safeguard)—uses the word *medicion*, which "the utmost ingenuity" of the Bench or Bar cannot interpret into anything else than MEASUREMENT.

If the word *assigned*, or any equivalent to it, had been used, then it is admitted that "ingenuity"

might have found material for an argument that the whole tract was in question and subject to that proposed assignment or ex-propriation. But even in that case, we venture to say it could have been successfully replied, that as long as that ex-propriation had not been made, or in so far as it was not made, the original right would remain; and when such ex-propriation, in the course of events, by change of condition and circumstance, had become impossible, the supposed possible incumbrance would be lifted and the right eased of the contingency. These are plain propositions of law and inductions of reason; but not neccssary further to be argued here, since the facts on which we are arguing do not call for their exposition. It is not a possible adverse "assignment" that the title is conditioned against, but a possible limitation of boundaries by a survey yet to be made of a thing already assigned. The language of the condition already proves this. It is not to "measurement of ejidos," simply, (much less assignment of them,) that the parties are subjected, but to "THE ejidos," (LOS ejidos;) and these words imply not a thing to be assigned, but something already assigned, or supposed to exist, but not precisely defined. That was the fact undoubtedly with regard to the ejidos of the Mission establishment; for ejidos had existed to it ever since its foundation in 1776. They were known and recognized, but never defined; because the extent of

them depended upon conditions that were subject to mutations—a kind of sliding scale—and were in fact constantly changing. They were at one time very large, because the establishment had need of, and had put to use, an extended territory; they were gradually reduced by non-necessity and non-use, being the scale by which their extent was measured, or rather allowed, until now, when the means of occupation and consequent wants of the establishment were brought nearly to a minimum, they were to be determined anew and in a different aspect. They were truly brought nearly to a minimum; but they were not extinguished, nor the equity lost to so much as was requisite to the existence of the establishment in its restricted and altered condition. How much, or to what extent that might be, was to be ascertained—ascertained, as the learned counsel for the city in the Pueblo case would say, "by inquest of office"; at all events by examination and consideration of the case as it should present itself when the examination came to be made.

As a missionary establishment, an "inquest," in another sense than that of the counsel for the city, had already been held upon it. In that character it was deceased—*functus officio;* its destiny fulfilled, if not its purpose accomplished. It was an *ex*-Mission, as it is properly designated in these papers.

But though the establishment was dead as a Mission; though the particular agency for which its organization had been intended was exhausted, it was still a living entity. It survived as a religious institution, for the ministration of divine worship, and the culture of the faith to which it had been originally dedicated; and it was entitled in this its parochial quality, as it had been in the plenitude of its missionary temporalities, to a local habitation and a name—to light and air—and, moreover, to space and circumference commensurate with its now more circumscribed uses. It was entitled to all these, but their extent had not been defined, nor their limits ascertained. As a church establishment—as an ex-Mission—it did not need the extensive pastures or grain fields which, as a Mission, with its thousands of Indian pupils, and corresponding herds and flocks, it had need of and could put to use, and was consequently allowed by the policy of the government to occupy. It had now neither herds nor flocks, nor yet neophytes to till the ground.

Its reduced possessions were recognized by the application of the head of the Roman Catholic Church in California for a confirmation of the lands it claimed. This was successful for the full quantity demanded, and resulted in a patent for a little less than nine acres of land. Thus it was that the ejidos of the Establishment of San Fran-

cisco de Assis was ascertained and measured, or, to say the least, it was determined that the ex-Mission was not in want of any portion of the Portrero.

But, were it possible that this Court should adopt the error we have pointed out, and assume that the measurement spoken of in the grant was meant to be of the ejidos of the Pueblo of San Francisco, and that the land would fall within the four square leagues belonging to the Pueblo, still it has never been held an objection to any grant that it was of land belonging to a Pueblo, but, on the contrary, such grants, when found valid, have been invariably confirmed, and the present grant would only be provisional in the sense of being subjected to the measurement by the Pueblo of such of the land as would have to be devoted to some public use, and for that reason could not become the subject of private ownership.

We assert, then, as a clear legal proposition, that the brothers De Haro in becoming pre-claimants, or pretendants, to the Potrero, already vacant, and relieved of the previous equity of the neophytes or temporalities of the Mission, acquired a right *ad rem*, which of itself and by force of law ripened into a right *in re* the moment that their pre-claim or pretension was "conceded," "licensed," or in any way legally sanctioned. So that, whether their grant was *sub modo* as to its whole extent, as urged by the Judge of the Dis-

trict Court, or only as to its territorial superficies, their right *ad rem* became positive on their lawful permission "to occupy," and their right *in re* became equally positive when the qualification was removed by fulfiillment of its conditions or the impossibility of their exactment.

Further reading of the title confirms these views. The parties change character; from being *pretendientes* they become "*interesados*."

"INTERESADOS" *in what*? Surely something valuable and real: the word itself implies that. Moreover, something valuable and real, because it *imposes obligations*, by non-fulfillment of which the "*interesados*" (we prefer to use the original word where its etymology and orthography carry its meaning on its face) are liable to lose a "right." This is the plain language of the instrument, and cannot be gainsaid nor its legal effect be denied: namely, that when a right is coupled with corresponding obligations, it is only by neglect or violation of the latter that the former can be defeated.

The conditions in this case are negative and positive. The "interesados" shall *not* obstruct the right of way, the high roads or customary servitudes, and they *shall* appropriate the tract to the uses they had proposed, and they *must* occupy it "within a year at the most." Now it is not possible rationally to associate the imposition of such conditions as these with the idea of a right liable at any moment to be absolutely blotted out,

in absence of any fault or *laches* of the parties interested and without even their privity. Yet, according to the opinion of the District Court, we are required to suppose not only that, but that it was a right which the grantor and his adviser and assistant "*must have known*" would be speedily extinguished—perhaps even within the year in which the interesados "*must* complete their arrangements for the occupation of the land. There is nothing in the law, nothing in the circumstances of the case, and certainly nothing in the instrument to justify any such supposition; nor is there anything in the characters of either of the two officers implicated—Micheltorena and Jimeno —to warrant us in supposing them capable of such a bitter mockery.

The name of the place indicates its appropriate use—a *potrero* signifying an enclosed space for domesticated stock. The Potrero which is the subject of this suit, is precisely adapted for that purpose, and had been so used by the Mission, until now when the Mission had no longer stock to pasture; the potrero walls had fallen down, and the place gone to decay. It was to that use that the brothers de Haro proposed, in conformity to the ruling policy of the Government, to restore it. When their proposal was accepted by the Government, it became a contract, one of the conditions of which was that it should be carried into effect within a year. Now, that was an

onerous condition, in the positive even more than in the legal sense, as will be agreed where anything is known of the labor, expense, difficulties and exposure to bodily danger, attending the collection of cattle. But these expenses were to be incurred, and this labor and exposure undertaken on the part of the young de Haros, by requirement of the Government, in order to secure a right which, after all, according to the opinion of the District Court, was no right at all, and could not be secured, and for which the instrument delivered to the parties "for their security," was no security whatever. To state this proposition is to condemn it. To argue it affirmatively would be to stultify the human understanding. Yet it is precisely on that proposition that the entire opposition to a confirmation of this claim rests.

No: it is not entirely on that proposition. In the judgment of the District Court, the grantees ought not only to have performed the conditions stipulated, and which they did faithfully perform, but several other things that were not stipulated, nor in accordance with the policy of the grant. The learned Judge thinks that they ought to have *tilled the ground*. That was not only not stipulated for or required, but would have been inconsistent with the real purposes of the grant. It is mortifying to have, in such a connection, to explain away misapprehensions of simple words. The words *el cultivo*, as used in the second condi-

tion of the grant, do not mean cultivation in the sense of tillage: the definite article used and the context ought to show to every understanding the sense in which they are employed—they refer back to the petition, and demand of the grantees that they shall appropriate the land to THE "cultivo"—the particular branch of industry—and THE "bienes"—the particular description of stock they had proposed to introduce into it, and of which *proposal* this "condition" is an *acceptance.*

The learned Judge thinks furthermore that they ought to have *built a house* on the tract. But neither was this a requirement of the grant—a quite sufficient reason for which is stated in his opinion by the Judge himself, namely, that the grantees already lived so near by that they did not need to erect a new residence. (Record, p. 187.)

The title in the present case is spoken of throughout the opinion of the Judge of the District Court as, if "Provisional" in some exceptional sense; and out of deference to the Judge, and willing to give to his argument its full force, we have so far argued the case somewhat on that supposition. We now proceed to show that our title is *not*, in any exceptional sense, "provisional," nor provisional in any other sense than are the mass of Mexican grants which have been acted on and confirmed.

We have stated (ante p.) that we agree with the learned Judge in supposing that the con-

ditions attached to the present grant, whatever they are, and in whatever respect they are peculiar, were inserted for reasons applicable to the case—not capriciously, or accidentally, but on purpose—"ex industria;" and, moreover, that this will be found to be the case wherever there is occasion to examine critically the particular conditions of any particular grant, and the motives that led to them. An instance will illustrate this point.

The case of the Reverend Fathers Missionaries, in application for lands out of those of the Mission of Santa Ynez for a college endowment is in point. For a clearer understanding, we quote the exact words of the Reverend Fathers in that part of their petition which is illustrative of the argument. After describing the character in which they petition, they go on to say:

ORIGINAL.

"Y aunque es verdad que dicho terreno lo tiene la Mision occupado con parte de su ganado, pero consultada la voluntad de los Neofitos, consienten gustosos y espontaneamente en que sea tambien ocupado por el repetido seminario con bienes semovientes, raizes y demas que le convenga, con la condicion de que sigan pasteando en el sus ganados, por lo que pidemos a V. E. es la aprobacion de este consentimiento, y el derecho ad rem interin se declara valdio, en cuyo caso pasara immediatamente a tener el derecho in re, y la propriedad absoluta."

TRANSLATION.

"And although it is true of said land that the Mission has it occupied with a part of its cattle, yet the will of the neophytes being consulted, they consent gladly and spontaneously that it may be likewise occupied for the said seminary with live stock, (bienes semovientes means literally self-moving property,) fixtures and other conducing ways, with the condition that their stock continue to pasture in it; therefore what we ask of Y, E. is the approbation of this consent and the right ad rem in the interval of declaring it vacant, in which case will come immediately to attach the right in re and the absolute property."

The Reverend Fathers did not need to have studied the civil or secular law to understand the force and effect of the terms they were using. The distinction between the *jus ad rem* and the *jus in re* is well understood in ecclesiastical law, and the advantage of obtaining the first as preliminary to the second, fully appreciated in that subtle branch of science. Governor Micheltorena, in the conditions attached to the grant, shows that he was even better aware of all the bearings of the case. He knew, evidently, that the absolute "investiture" necessary to the right *in re* could no more take place with respect to the corporeal hereditament of lands than to the incorporeal hereditaments of a church benefice, till *after* a "declared vacancy."

As between the conditions attached to that concession, and those in the case at bar, there are notable points both of similarity and of difference.

The grantees in each case alike are forbidden to obstruct the high roads, right of way or other servitudes; but unlike, the Reverend Fathers are authorized to "circar"—that is, fence in or enclose; while the Potrero grant is silent in that respect—the reason why, that in the name "Potrero" an inclosure is understood, and the use to which the tract was to be applied required an inclosure. The respective "interesados" were alike required to put their respective tracts to use; and, unlike, the *manner* of use was in one case

discretionary, while the *object* or *unsufruct* was obligatory, and in the other the manner of use was obligatory and the object or destination of the results was discretionary; that is to say, the Reverend Fathers taking the grant in a fiduciary capacity, were under obligation to devote the land and its profits to the special objects of the endowment, but with the discretionary power over the manner of making it and them available; while the brothers De Haro were required to put the tract granted them to a particular use, namely, that which they had "*intentado*" or *made proposals for* in their petition; but they were not restricted as to the purposes to which they should apply the profits of their enterprise.

Moreover, though the Reverend Fathers supposed that their inchoate right—their *jus ad rem* —would ripen into *plenum dominium*, at the identical instant, and by the identical process of declaration of vacancy, or of withdrawal of the prior lien—the neophyte incumbrance—the Governor knew the law better. There must not only be a vacancy ascertained on the one hand, but there must be an induction, an investiture in addition to the feofment, on the other. Hence, he directs that as soon as the lands shall be declared disoccupied of the Mission cattle upon it, the proper magistrate should be applied to to measure the assigned quantity, and give the Reverend Fathers —trustees of the college—actual seizin of the

premises by juridical delivery. That process was necessary to complete their title, and was made obligatory by the terms of the grant. Let us note here the differences in the facts of this case and that of the brothers De Haro, and consequent differences in the conditions prescribed for the latter.

In the latter case there was no waiting for a declaration of vacancy. The *fact* of vacancy existed at the time of entering the claim, or making the petition, and it became a recognized and "*declared*" fact by the reports of the local magistrate and Governor's advising officer, adopted and acted upon by the Governor. Hence, it was not only competent for them to occupy *instanter*—to make immediate entry—but they were *obligated to do so*, within a brief period, under penalty of losing their right. It did not need measurement in advance of actual seizin, because its name denoted its limits, and in itself presupposed a segregation already made. Hence, the grantees are not required to apply for measurement, but only to hold themselves subject to some future measurement contemplated for a neighboring and possibly a coterminous right; meanwhile—"*interim*," as the Reverend Fathers would say—their possession remaining intact. The grant itself constituted their authority for actual entry—their livery of seizin—and was delivered to them for their warrant of entry, and their safeguard in the premises. Here occurs another "variation in

phraseology," showing a clear and discriminating use of language and appreciation of circumstances. The *titulo* to the Reverend Fathers is directed to be delivered to them for their *due proof*—"su debida constancia"—while that to the brothers De Haro is directed to be delivered to them for their "*resguardo*,"—literally, safeguard. The one stands as "due proof" that the reverend college trustees have a priority of right in the contingency that the lands fall vacant by the subsequent withdrawal of the neophyte equity, and as a warrant on the happening of that contingency, to the proper magistrate to ascertain their boundaries and put them in juridical possession. The other stands as a warrant to the "interesados" themselves—*to enter into possession*, of their own motion and in their own right, and as their safeguard in doing so. The proposition stands, therefore, on a perfectly solid foundation, that the brothers De Haro, in the very incipiency of their case—that is, by making their petition "*en pretension*"—acquired the right *ad rem*, in a much clearer sense than the Reverend Fathers acquired it even by the Governor's acquiescence in the prayer of their petition; and it is to be noted that the Fathers recognize the fact that under then existing circumstances it was not in the power of the Governor to grant them more than an inchoate right, to a perfection of which a subsequent action would be necessary, and that action contingent upon a

dubious an uncertain event—an event not contemplated in law, (for the law contemplated the conservation and not the destruction of the indigenous race,) whatever might be its probability in fact. Therefore, we say that the brothers De Haro acquired in the incipiency of their case the right *ad rem* in a clearer sense than the Reverend Fathers acquired it through the Governor's concession; because the tract which the brothers De Haro made claim or pretension to, had no incumbrance or intervening equity upon it; was already in contemplation of law subject to grant, and consequently subject to claim, and on which the first claimant, by the mere act of lawful claiming, established a lien equivalent to a right *ad rem*. Consequently, that when they entered into possession, in pursuance of the executive *warrant* and *requirement*, they united the two qualities—the *right* and the *corporeal possession*—which constitute the *jus in re*.

We understand, then, that through these proceedings the brothers de Haro became possessed of some acknowledged rights of property.

This Court has held, in numerous instances, that the conditions attached to rights thus acquired were conditions subsequent, and not precedent, and the right not forfeited by mere nonconformance or non-performance.

In this case we have no occasion to appeal to that liberality of the law, just as it is.

We fulfilled all the conditions.

We performed all of the affirmative, and violated none of the negative.

We have *not* refused to subject ourselves to the "measurement" preliminarily spoken of.

We have *not* obstructed the highways or other servitudes.

We have not alienated or transferred, to the injury of any property of the Mission.

We *did* occupy the land within the required year.

We *did* appropriate it to the particular uses specified in our petition, and made a requirement in our grant.

And as, by the strictest letter of the title, a departure in one or other of these particulars, was the only way in which the right could be lost, and as there was no departure in any particular, we suppose the right is not lost, and subsists in full force.

III.

We wish now to have it clearly understood that the above archive testimony, and the corresponding *Titulo* delivered to the parties, constitute the entire testimony of a documentary character upon which the case was submitted to the District Court, and upon which it is now submitted to the Supreme Court; consequently that all spurious papers or documents, or to which suspi-

cion of fraud can attach, as they were repudiated before the District Court, so they are now, before this tribunal, repudiated by the claimants and their counsel.

This brief allusion to the fraudulent papers, with which the record is obliged to be disfigured, and asking attention to the testimony which shows that the claimants in the case were in no way parties to the fraud, but victims to a conspiracy, we should have thought quite sufficient, but for remarks which his Honor the Judge of the District Court has thought proper to put in his Opinion.

Judge Hoffman, in stating the fact that when the fraudulent character of the "second grant" (so called) was ascertained, it was "formally abandoned by the counsel for the claimants," adds *together with the series of perjuries by which it was attempted to be supported.*"

The Judge also reproduces in a more unjustifiable way, the same suggestions at the conclusion of his Opinion, thus:

"It is, perhaps, not unfair to add, that the for-
"geries and perjuries which have been so freely
"resorted to, to impart additional validity to this
"title, may justly be considered an admission on
"the part of the claimants of the infirmity of the
"only title paper they in fact received."

1. Although the documents alluded to are undoubtedly fraudulent, they are not "forgeries."

Signatures to the alleged "second grant" are all genuine; *i e.*, made by the persons by whom they purport to have been made: as are also those to the alleged act of juridical possession, with a single exception, that of the deceased Francisco Guerrero.

2. There was no "attempt" on the part of the claimants, as his Honor imputes, to sustain the fraud by a "series of perjuries," or any perjury whatever. On the contrary, the record shows that the claimants exercised an unusual degree of caution—to be assured of the *bona fides* of the documents before they were induced to offer them in evidence. The record shows that after the documents were produced to the claimants by their pretended discoverer, (affidavit of Gliddon, Rec., p. 120,) the claimants took the precaution to make diligent inquiry, (Mr. Beard's affidavit, p. 121,) and finally, before filing the papers, to submit them to the scrutiny of three gentlemen—(Deposition of Throckmorton, p. 59,)—as competent and as credible as any persons in the State: namely, Mr. Thomas O. Larkin, for many years prior to the American conquest Consul of the United States and confidential Government agent on this coast; Mr. Jacob P. Leese, an intelligent American, for many years resident of California, and frequently occupied in public affairs under the former Government of the country; and Mr. F. M. Teschemacher, also a long time resident and late Mayor

of the City of San Francisco. On the opinion of these gentlemen, and not till after this scrutiny, the claimants acted, and produced in evidence, by advice of counsel, (See Question 4, depo. of Throckmorton, p. 63,) the papers of the authenticity of which they could no longer have a doubt.

3. There were no perjuries in the case of which the claimants were either procurers or in complicity. The gentlemen above named, who were pre-consulted, verified their opinions on the stand, as will be seen by their several depositions; and these opinions were further corroborated by the testimony of such gentlemen as Mr. Abel Stearns, and Don Pablo de la Guerra—the former a well known American resident of ancient date, twice or thrice a member of the State Legislature, and the latter a gentleman of education, family and position, several times a member of the State Senate, sometime President of that body, and at present occupying the high position of Judge of the Second Judicial District of the State.

Now, we venture to say, that the Judge from whom this appeal is taken will not impute perjury, or subornation of perjury, or forgery, or complicity in forgery, to either of the gentlemen named in this connection—neither to Mr. Beard, or Mr. Throckmorton, as claimants, or to Messrs. Larkin, Teschemacher, Leese, Stearns, or De la Guerra, as witnesses. The truth is, the signatures to the fraud (with the single and unimpor-

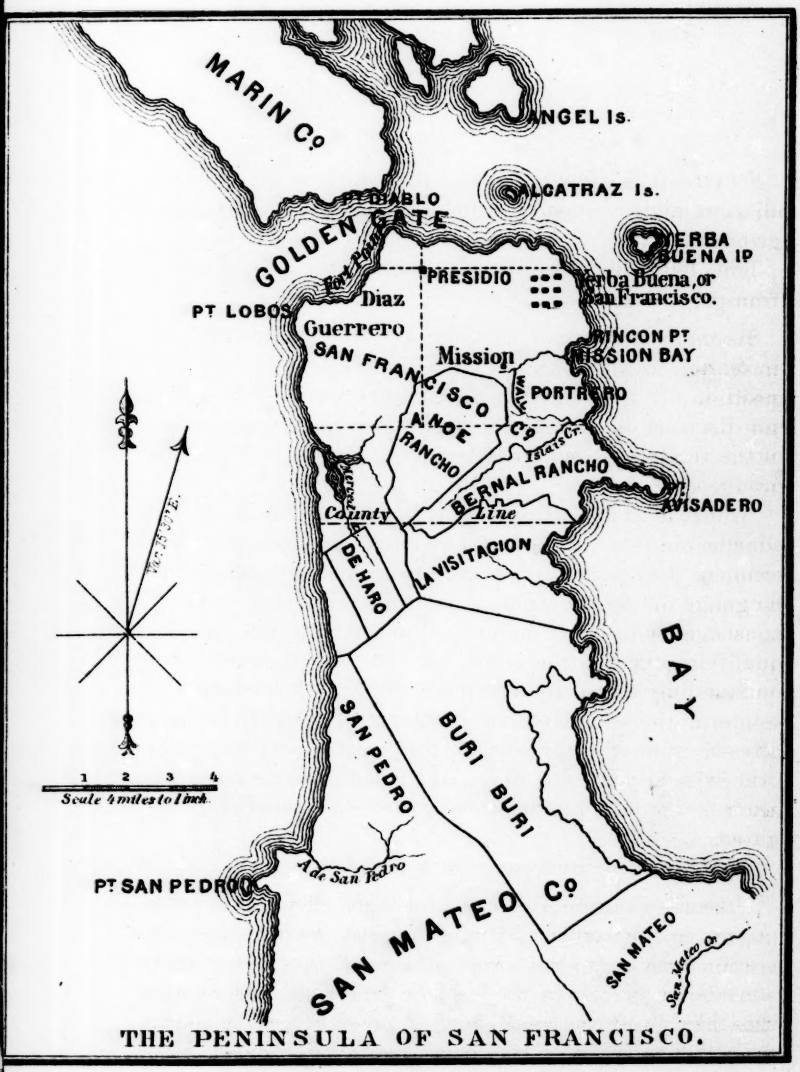
tant exception before shown) are genuine—that is, made by the persons by whom they purport to have been made—and moreover, the body of the instrument is in the handwriting, as proved by the Government, (Deposition of Gomez, p. 136) of a person (said Gomez) who was a Departmental clerk at the time the instrument bears date, and often employed to draft papers. The fraud consisted in the fact, that when the papers were made, the parties who made them had no right to make them. The only perjuries committed were by those persons, who, after reaping the reward of their crime, or been disappointed of it, (it is not material which,) turned informers on themselves and on each other, and were, by their own showing, either parties to the conspiracy, or instruments of it, to victimize the claimants.

The plot was well laid, and it is not surprising that the claimants were deceived. To persons unskilled in the law, and even to lawyers not versed in the Spanish language, and conversant with the particular subject matter, the second assumed grant would seem a very natural sequence of the real one. It ought to have been held a sufficient apology

for the claimants, and to save them from castigation, such as that of the Opinion of the District Judge, that the fraud was sufficiently well contrived to baffle the Law Agent of the Government and the Commissioners. But we have further to show, that even the Judge is not, in like connection, infallible. There are three cases reported, in 1st Hoffman, pages 28, 116 and 174, and consecutively reversed in 22 Howard, pages 392–422, in each of which the Judge of the District Court was deceived, or otherwise misled, on much less substantial and less plausible showing than deceived the claimants in this case

WM. M. STEWART,

Of Counsel.



THE PENINSULA OF SAN FRANCISCO.

ANALYSIS.

FIRST.—It is shown that the land in question and the adjacent lands were subject to be granted by the Mexican government.

This, with the authorities and archives cited, occupies from page 8 to 16.

SECOND.—It is urged that the acts of the government, in relation to this petition for a title, show the final disposition of it; in contradistinction to treating it as a case not disposed of. To prove this, the entry of such action in the records, Toma de Razon and Jimeno's Index are produced.

And it is contended that this form of title leads to the conclusion, that on this application of de Haro the government had conclusively disposed of the land. The language of the provisional paper is examined, to see if consistent with this conclusion; and it is found, that the qualifying term in the grant, 1st, has no reference to any outstanding estate in any pueblo; 2d, nor creates any estate in the establishment of Dolores; and, 3d, is only a reservation of a right on the part of the government to otherwise appoint the land; and that this express reservation is the only qualification of the estate secured by the grant.

This occupies from page 16 to 27.

THIRD.—Is an inquiry into the legal effect of the title papers, in themselves. Under the last head the consideration was as to the effect of acts of the government considered merely in the light of final acts. But under this third head the legal effect of these records is shown from the decisions of this court, declaring them to be in

themselves the very grant of the title. In support of this the cases on p. 27, under point I., are cited, which apply to Toma de Razon and Jimeno's Index, extending to p. 33. And next, the legal effect of the provisional grant is ascertained, as construed by this court, and by the decisions of the district court, by Judge Hoffman. See this under point II., page 27, where the cases are cited; the examination of which cases extend from p. 33 to 47.

This ends the argument proper of the case; but as the act of 1851, sec. 11, (9 Stat., 633,) makes the decisions of the Supreme Court of the United States the statutory code for the determination of this case, under the—

FOURTH head will be found abstracted many decisions of this court, and as pertinent thereto, the decisions of the boards of commissioners in Louisiana, brought into review by the decisions of this court. These and the regulations of the Spanish government for the disposal of its lands, are taken from the public archives, found in Amer. State Papers; title, Pub. Lands. The documents and adjudications thus recognized by the act of 1851, contain the full history of titles of Spanish origin.

This compilation of cases and Spanish and Mexican documents extends from page 47 to last page but one of the argument page 85.

On the last three pages the decision of the judge of the district court is examined.

The following are references to the pages:

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Mission Dolores extinguished----------12
Cases cited on Toma de Razon----------27
Cases cited on provisional grant----------27
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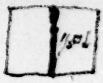
PAGE.

Construction of a provisional grant----------33
Decisions under act of 1851----------56, 60, 73
Decisions of Judge Hoffman----------57, 58
Chouteau vs. Eckhart----------63
U. S. vs. Arredendo----------61–63, 55, 52
Spanish "permission to settle"----------68
Fremont's case a precedent, and the other decisions following it----------74
Annexed is a sketch of the land and its surroundings.

NOTE.—The great length of the following argument is caused by the incorporation into it of a large number of decisions of this court, bearing directly upon the questions raised in the case at bar. This course has been adopted, that the labor of the court may be lightened in the examination of so many cases cited, and that they may see them in a condensed form; or such citations therefrom, as will convince the court that the application of well-established principles, will lead to an easy determination of the issues here involved.

There is also set out in the following pages those facts gathered from the Mexican archives, which teach the legal history and character of the region and very neighborhood in which the old Mission pasture grounds lie, and therefore speak as impartial and cotemporaneous witnesses, uttering those things which compose the very *res gestæ* of the parceling out into private ownership, the stony and sandy promontory of which the land in question composes a small part. As what has been done by Mexico and its legal sucessor, the United States, in distributing this region of country amongst the inhabitants, as owners thereof, is believed to be pertinent, and such information as will be desired by the court in carrying on this investigation, these ancient archives have been inserted here.

Aside from these materials, the argument proper composes much less than half the space occupied.



IN THE

Supreme Court of the United States.

DECEMBER TERM, 1866.

JOSEFA DE HARO, et al.,
Appellants,
vs.
THE UNITED STATES.

STATEMENT OF THE CASE.

This is an action for the confirmation of half a square league of land within the Mexican pueblo limits of San Francisco, claimed to have been granted by the Mexican government.

On page 176 of the record, will be found the grant entered in both Jimeno's Index and in Toma de Razon. The record also sets out the petition to the governor for the land; the certificate of Hinkley, alcade of San Francisco, dated 13th April, stating that there are no claimants to the land; the reference to Secretary Jimeno, his report dated 29th April, and the provisional grant dated 1st May, 1844.

On page 35, is the testimony of Mrs. Bernal, who owned the adjoining property which has been confirmed to her. She states that the young De Haros occupied the land as a pasture for cattle; that they were both killed in the war between Mexico and the United States, and that the heirs of the De Haros were infants or married women—(page 36.)

On page 62, Throckmorton, a witness, states that when the petition in this case was filed, the parties were minors or married women.

On page 9, H. K. Rose, who was administrator of the estate of the senior De Haro, tells of the family, their names and condition as to age and coverture, how he came into possession of the genuine grant; that Guerrero, husband of one of the heirs, and Andrews, husband of another, had care of the property, and occupied the land with cattle and horses; that the witness, as administrator, repaired the enclosure of the land and had possession of it for the estate.

Jacob P. Leese, page 27, says he understood the land to belong to the De Haros.

Mr. Teschemacher, a witness, says he saw De Haro's horses on the land, and that the witness was in the habit of sending his own horses to the place to recruit, and permission was in such cases obtained from one of the family, Guerrero. He says he saw there the horses of De Haro on the land from 1842 to 1846, and has known the land from 1842, and he states who the family are composed of, (on page 29.)

Abel Stearns, a witness, (page 30,) says he knew by public notoriety that the De Haros had a ranch of the name Portrero de San Francisco.

Thomas O. Larkin, page 31, says he knew from common report, that the De Haro family had land near the mission before the occupation of the country by the Americans.

These are all credible witnesses. After their testimony, the court says, that while it appears that the parties did not live on the land, but near it with their father, "they no doubt repaired the old wall which had been erected by the priests. * * * On this tract they placed their cattle and horses which were readily attended to by themselves or their vaqueros residing at the mission," and the judge adds, it may be doubted whether this kind

of use of the land raises an equity which the government is bound to respect.

POINTS AND AUTHORITIES.

I. The first question that arises in this case is, whether any valid grant of land within the area of four square leagues around the centre of the Mexican pueblo of San Francisco, could be made by the Mexican government; or whether the title to such four square leagues was vested in the pueblo, in such manner as to constitute an inhibition on the power of the governor to make a private grant thereon. The following cases show the nature of the pueblo title:

Brown vs. San Francisco, 16 Cal., 451.
Hart vs. Burnett, 15 Cal., 530.
Townsend vs. Greeley, No. 124, S. C. U. S., Dec. T., 1866.
Grisar vs. McDowell, U. S. Circuit Court.
Leese vs. Clark, 18 Cal., 535, 573.
Payne vs. Dewey, 16 Cal., 220.
Singleton vs. Touchard, 1 Black, 342.
League vs. Egery, 24 How., 264.
Christy vs. Pridgeon, No. 22, Dec. T., 1866, S. C. U. S.

That it was usual to make such grants is shown by the public records, by which it appears that a large portion of the land within these limits was granted by the Mexican governors. See the expedientes for the following ranchos hereinafter set out:

La Visitacion Rancho, to Jacob P. Leese.
The Buri Buri Rancho, to Sanchez.
Las Salinas Rancho, to Bernal.
Laguna de la Merced, to Galindo.
And the Portrero de San Francisco, to De Haro.
Rancho San Migue, to Noé.

PASTURE FOR CATTLE AND HORSES.

That the land in question or the promontory of which it composed a part was better adapted for pasturage than cultivation is shown by the fact that it was generally granted for that purpose.

It was so used by the Mission Dolores before they gave it up. It was granted for that purpose by the governor.

The Visitation ranch was granted to Jacob P. Leese for that purpose.

Las Salinas to Bernal.

Laguna de la Merced to Galindo.

Rancho San Miguel to Noé.

The documents hereinafter set out in relation to the above tracts which lie in a body adjacent to the Portrero now claimed, show that in the opinion of the owners and the government the best use the land could be put to was, as above stated, for the keeping of cattle.

I. *In reply to the first question and in support of the authority to grant lands within the four leagues, the following cases are cited:*

This is not a new question, although this court has never directly passed upon it. Yet it has been acted upon in California practically as a well settled principle, both by the Mexican and by the United States authorities. Numerous grants within this space have been made by the governor of California, and such grants have been confirmed by this court; and the political branch of the government, through both the legislative and executive departments, have assumed such power to have existed, and, as successor of Mexico, has exercised the same power in reserving for public use portions of the same lands, and Congress by appropriations of money for the erection of public buildings on such reservations, have shown their concurrence in such views.

In the case of Grisar v. Irwin McDowell, now pending in this court, (No. 367 on the docket,) this principle is involved with reference to the power of the government to exercise it in making reservation of lands for public use. Such reservations were made by the government long before the confirmation by the United States Circuit Court of the pueblo title to San Francisco, and although they are expressly excepted in the decree of confirmation, yet it can hardly be contended that the title rests upon an exception which the court had no foundation in law for making.

In the opinion of Mr. Justice Field, in the case, he says (page 21): "It is difficult to state with precision the exact character of the title or interest which the pueblo possessed in the municipal lands. It is sufficient to say that the government undoubtedly retained the right to control the use and disposition of these lands until by action of the officers of the pueblo, or other competent authority, they became vested in private ownership. Numerous grants to individuals within the limits of the four square leagues claimed were made by the governors of the department, some with and some without the sanction of, or even consultation with, the authorities of the pueblo. If they could thus pass the title to private persons it would seem to be a reasonable inference that they could reserve from the disposition of those authorities such portions of the lands as might be required by the government for public purposes.

"And this is the conclusion expressed by this court when the pueblo case was decided. This power of control and disposition which existed with the former government, passed, upon the cession of the country, with all other public rights, to the United States."

And in Townsend v. Greeley, (No. 124, December term, 1866, of this court,) the court say of this pueblo title, "It was not an indefeasible estate; ownership of

the lands in the pueblos could not in strictness be affirmed. It amounted in truth to a little more than a restricted and qualified right to alienate portions of the land to its inhabitants for building or cultivation, and to use the remainder for commons, for pasture lands, or as a source of revenue, or for other public purposes. *This right of disposition or use was, in all particulars, subject to the control of the government of the country.*"

It would seem as though the matter was rather a power in the pueblo, as an agent of the government, to convey the lands to private ownership, than anything else; for if the pueblo conveyed to individuals lots for private use, the title passed; and yet the government having, in innumerable cases, exercised the same power, it is thus shown that both governments—the supreme and the pueblo—disposed of the lands. But the paramount power rested with the government.

GRANTS BY THE MEXICAN AUTHORITIES WITHIN THE FOUR LEAGUES.

The following Mexican grants within the pueblo limits were made, and have been confirmed by the United States, the extent and location of which are shown on a sketch adjoining page 1 of Dwinelle's argument on the San Francisco case in the U. S. Circuit Court, and in this court on appeal.

On page 67 of Add. to Dwin. Arg., is the expediente of Jacob P. Leese for the Visitation rancho of two leagues, by which it appears he petitioned for the land in 1839, "being desirous of possessing a suitable place for raising cattle and horses, he solicits" the tract, about one league from the mission of San Francisco, bounded "south by the ranchos of Don Francisco Haro and Don Jose Sanchez, and on the east the sea."

On 31st July, 1841, the land was granted, and has been confirmed to R. S. Eaton. (See 1 Hoff. Rep., App., p. 20, No. 142.)

The Sanchez title called for above is for the Buri Buri rancho, containing 15,739 acres, which was confirmed to Jose de la Cruz Sanchez. (See 1 Hoff. Rep., App., p. 14, No. 97.) The petition on page 43 of Addenda to Dwinelle's Arg., shows that Francisco Haro, on 2d November, 1835, summoned the Mission Dolores, not the pueblo of San Francisco, to settle the boundaries of this rancho, in order that possession of it might be given under the concession.

3. The other tract called for as a boundary of the Visitacion ranch is the San Pedro rancho, granted to Francisco de Haro.

The expediente on page 48 of Add. to Dwinelle's Arg. shows a petition for this land, stating that the Indians of the *Pueblo Dolores* had formerly occupied it for their cattle, and that for years the same has been vacant. He now, in consideration of its being vacant and no longer needed for the purpose for which it was formerly used, that is, for pasture lands for the pueblo of Dolores, asks for a grant of it, "that he may place thereupon the stock that he possesses."

This was in 1835, 22d November.

On 7th March, 1836, the report was made on the petition, in which is this suggestion: "Moreover, the common lands (ejidos) which I think will belong to this place, after it shall have become a pueblo, have not yet been designated." And it is further stated that the community at the mission occupy the land.

On this report the grant was denied.

Afterwards, on 26th January, 1839, the land was granted by Alvarado to F. Sanchez, being two square leagues, and it was confirmed by the United States in 1853. (See 1 Hoff. Rep., App., p. 49, No. 352.)

This tract lies adjacent to the limits of the four square leagues of the pueblo of San Francisco.

The next tract, and within the four leagues, is *Las Salinas*, granted to Bernal. This lies adjoining and to the north of the tract *La Visitacion*.

This was confirmed August 20, 1855, (see 1 Hoff. Rep., App., p. 5, No. 30,) for one square league. The expediente is found in Dwinelle's Arg., p. 64 of Add. The petition for the grant is dated October 3, 1839, stating that the mission does not need the land.

On the 4th October, 1839, the matter is referred to the authorities, both of the pueblo of San Francisco and the Mission Dolores.

On 8th October, the pueblo reports the land to be now used by Bernal for his cattle, and the petitioner is "recommendable;" and on the same day the "*Establishment of Dolores*" reports that "this *establishment* is not in need of the tract of land petitioned by the said party, for the greater number of cattle *belonging to the establishment* is on the place called Los Pilcartos, on the coast."

On the 10th of October, 1839, M. Jimeno, acting as governor, makes an order of concession, in which he says: "On viewing the petition, the report of the justice of the peace of San Francisco, and that of the superintendent of the mission of San Francisco, and other proceedings which were had, and ought to have been viewed, in *conformity with the law and regulation*, I do declare Don Jose Bernal owner in full property of the place called Las Salinas, with the Portrero Viejo, *bounded by the mission of San Francisco*, the sea, and the lands of the Visitacion."

This tract is bounded by the De Haro tract, the Portrero, now in question.

When this case was up for confirmation (see 1 Hoff. Rep., p. 50, U. S. vs. Bernal,) not a question was made as to the correctness of the above declaration of Jimeno, that the grant was made "in conformity with the law and the regulation."

Adjoining the Visitacion is the tract called "*Laguna* de la Merced," granted to Galindo, the expediente of which contains a history of the nature of titles on this peninsula. (It is found in Dwinelle's Arg., p. 38 of Add.;

also No. 10 of Wm. Cary Jones' List, U. S. Senate Doc., 1850–51, vol. 3, doc. 18, p. 95.)

The petition, on 15th August, 1835, asks for the tract of land lying vacant near to San Francisco *and Dolores.* It was referred, to ascertain if it was the property of any "individual, mission, corporation, or pueblo." The report, on 10th of September, 1835, by F. De Haro, is that the property "has belonged to the *missi m* of San Francisco. * * It is not farming land,* but it is pasture land, for it can only be used to raise a small number of cattle at the said laguna, for all the land is sandy and produces pasture only fit for horses and cattle. For the purpose of cultivation it is altogether useless and barren."

This was the reply of the pueblo of San Francisco. On the 18th September, 1835, the *Mission Dolores* answered, saying: "The land belongs to this community; it is grazing land. * * It is at the distance of a little more than a league from said mission, and is not in the occupation of the same; but as the commons which shall belong to this place when it shall be constituted into a pueblo are not yet designated, I do not know whether the said commons will embrace the said tract of land, and for this reason I cannot say whether the said place may be granted without prejudice to this community."

On 22d September, 1835, at Monterey, the matter was inquired into; the petitioner directed to produce three witnesses to speak as to the issues to be made, as follows: 1st. Whether the land was not in the actual occupation of the mission; 2d. Whether it was fit for the use for which it was petitioned, that is, pasture land; and 3d. Whether the petitioner had cattle to occupy it. The witnesses swore that the land was fit for pasture only and petitioner had cattle, and that the mission was not using it, whereupon José Castro, who was then the governor, did, at Monterey, the capital, grant the land to the petitioner.

The grant so obtained was confirmed by the United

States on 24th July, 1855. (See 1 Hoff. Rep., App., p. 15, No. 102.)

The next grant applied for was the one now in question for the portrero; it is for a very small piece of land, half a square league, and the petitioners state that they have cattle to place thereon. The petition is dated April 12, 1844, and is expressed to be by residents of the "ex-mission of San Francisco."

The accompanying statement of the father of the petitioners, who consents to his minor sons undertaking on their own account the duties of settlers, states the land to have been the pasture of "the ex-mission of San Francisco de Assis, at present lying unoccupied."

Accompanying this petition is the statement of the proper officer to speak for the pueblo of San Francisco, the Alcalde Hinkley, who says: "Up to this day there are no claimants of any kind, and it is not occupied by any community or private individual."

These were the proceedings had at the locality where the land was situated. The papers then went to the Capital, Monterey, and on the 29th of April, 1844, were presented to Micheltorena, the Governor, who referred them to Jimeno, the secretary, saying let the secretary report on the same.

On the same day the secretary, Jimeno, reports that the *mission of San Francisco* "no longer holds property *of any kind;* and consequently the potrero, or enclosed place for keeping horses, in request, is lying unoccupied, as the parties show; and inasmuch as there are to be assigned to said *establishment* its corporation or common land, I am of opinion that in the meanwhile the parties might occupy the land by virtue of a provisional license of your Excellency, because thereby no prejudice is caused to the community [or] to any private individual."

On the 30th of April an order was made that a patent should be issued to the petitioners, and they were authorized "to occupy provisionally" the land.

On the next day, May 1, 1844, was issued the paper in which the governor grants to the petitioners "the occupation of the aforementioned portrero, subject to the mensuration to be made of the corporation or common lands for the establishment of San Francisco. (Pages 21–23 of the record.)

On the Toma de Razon and also in Jimeno's Index is an entry of the grant of the portrero to the petitioners. (Page 176 of the record.)

The next grant is for the Rancho San Miguel to Jose Noé. The petition was May 28, 1845, more than a year after that of the De Haro petition, and on the same day as the decree of the departmental assembly directing that unless the Indians of the missions of *Dolores* and others named, should return to the occupation of the abandoned lands of such mission within one month, the mission would be declared to be without owners. (See this decree, page 88 of Dwin. Add., also in Halleck's Rep., App., 20. Jones' Rep., 72.)

The petition of Noé states that he is the owner of a number of cattle and horses, and not having a suitable place upon which to put them, he asks for a square league on the tract now vacant to the west of the *establishment* of Dolores, bounded by the ranches of De Haro, Riddle, and Bernal, and the sea. This was 28th May, and on 14th June, 1845, Governor Pico refers this to the Justice of the Peace of San Francisco for his report—let him notify the owners of the adjoining estates of this petition, that their property may receive no prejudice; also, to ascertain whether any other petition is pending for the same tract. But the governor did not, as in case of previous grants, require a reference to the authorities of the Mission Dolores. On the 28th of August, 1845, a report was made on this reference, stating that the owners of adjoining estates had been notified, and that no injury could result to them. "The said land is recognized as the property of the *ex-mission* of San Francisco,

and is now unoccupied; it is near that solicited by Don Benito Diaz, whose petition is now pending."

On the 23d of December, 1845, the decree for the concession was made, granting to Noé a square league of land "in the immediate neighborhood of the *Mission* Dolores, being adjoining the lands of Don Francisco Haro, Robert Riddle, and Bernal," and, on the same day, the grant was made, describing the land as in the neighborhood of the *ex-mission of Dolores.*

On the 8th of May, 1846, this was referred to the departmental assembly, which, on the 22d of May, 1846, recites that the land in the immediate neighborhood of the *ex-mission of Dolores* had been granted by the government to Noé in *accordance with the laws* concerning the matter, and the assembly approves the grant.

In connection with this action of the governor and assembly, may be mentioned the proclamation for the sale of the missions of Dolores and others, on the 28th of October, 1845, (see page 90, Dwinelle's Argument, Add., also see Halleck's Report, App., 21. Jones' Report, 75,) which, following the previous decree of 28th of May, 1845, above referred to, that the mission would be declared abandoned unless it was returned to by the Indians, shows that at the end of the month there named, viz: by the 28th of June, 1845, the mission was held to be extinguished, and all its property and rights of a possible pueblo terminated.

MISSION DOLORES EXTINGUISHED.

Next comes a petition for Point Lobos by Benito Diaz, on the 3d of April, 1845, which never ripened into a title, and was rejected by this court—the petition is genuine and is of value, as showing that all of the land in that vicinity was then held and considered as private property, which had been granted by the government. The petition represents that Diaz, having some cattle and no place to keep them, and, as "there is

a vacant place in the jurisdiction of San Francisco, known by the name of Ponta de Lobos; bounded on the north by the sea, of about two square leagues, he requests the grant thereof, so as not, however, to include the ruins of the presidio and castle fort, which lie on the land.

There was also a tract of two hundred varas by one hundred varas, between three and four acres, in the pueblo of San Francisco, claimed by Jacob Leese and Salvador Vallejo, under grant of Governor Alvarado, dated 21st of May, 1839, which was confirmed February 5, 1866, (see 18 Cal. R., 535.)

The city of San Francisco claimed that these grants within the four leagues were invalid, but, having been confirmed, the question has been made as to the power of the governor to make the grants.

This question has been decided by the Supreme Court of California in several cases.

In Hart vs. Burnett, 15 Cal., 530, the court examine the nature of the title of San Francisco to its pueblo lands. In doing so it refers to the geographical fact that the same four leagues of land contained two settlements, either or both of which might claim the same lands as part of its four leagues, for the Mission Dolores had some pretensions at one time as a prospective pueblo. Thus the court speak in 15 Cal., 530, 543, (Supra,) saying by way of explanation why the title of the pueblo of San Francisco did not embrace all the lands within the four leagues: "Again it also appears that long prior to the organization of this pueblo, there existed, within the limits of the four leagues, an *establishment* called the *mission of San Francisco* or of *Dolores*, with some sort of claim or right to the lands in that immediate vicinity;" and, on p. 548, 549, the court explicitly hold that the governor had the authority to make the grant of land within the four leagues of San Francisco.

This question came up again in the following case:

Brown vs. San Francisco, 16 Cal., 451. The only ques-

tion here was as to the power of Mexican governors to grant lands within the four leagues limit of pueblos. The land in question was a part of the Bernal grant, and was within the pueblo limits of San Francisco.

The court unanimously decided that the governors did have such power.

On page 457, in the opinion, it is said, "But defendants claim that the land in dispute, being within the general limits assigned by law to the pueblo, which was organized at the end of 1834, was not susceptible of grant. * * *This question of law is now presented for our decision.*"

The court then proceeded to show that the Corporation of San Francisco had not acquired any vested interest in the land, although within its pueblo four leagues limits, on account of the opposing or alternative title of the Mission Dolores; for under the Mexican system that mission, by becoming a pueblo, would also become entitled to its corporation lands. These views of the court are expressed thus, on page 457:

"In Hart vs. Burnett, 15 Cal., 544, we reviewed the facts connected with the existence of the mission, and the organization of the pueblo of San Francisco, and suggested that although a portion of these mission lands fell within the general limits of the pueblo, this pueblo may not have acquired a title to these lands, with right of possession, till after the secularization of that establishment, and then probably not to such portions of these lands as had been granted to private ownership, or dedicated to private uses. Moreover it was also shown * * that this mission had not been entirely secularized at the date of this grant, 1839 or 1840. There were numerous fluctuations and changes in the execution of this law of secularization, its execution being at one time entirely suspended, and the mission establishments partially restored to the direction and management of the mission priests. It would be very difficult, if not impossible, to

determine at any particular time what portions of these mission lands were considered as susceptible of grant by municipal or territorial authorities, and what portions were considered as still in the possession of the mission establishments. * * * * It would seem to follow from these premises that the portion of land in dispute in this case, being both within the general limits of the pueblo, and within the limits of the old mission, then only partially secularized, was still exempted from the exercise of the pueblo rights over it."

The court, after having thus shown that in consequence of the contingent claim of the possible future pueblo of Dolores to the lands, that the pueblo of San Francisco acquired no interest in them, proceeds next to assert the broad principle, that the governor had power to grant —as in case of other lands—referring to several authorities to sustain this view. The court assert, as the law, that prior to the actual setting apart of a particular body of land for *ejidos*, technically so called, the governor has power to grant the same with the usual conditions annexed to grants of other lands, as to approval by the assembly, adding, page 459, "Nor does it by any means follow that because a particular tract of land falls within the general limits of a pueblo, this pueblo has such a right or title as to exempt it from the general operations of the granting powers of the governor and deputation. The whole course of our reasoning in Hart vs. Burnett, 15 Cal., was opposed to this view of the character of pueblo titles. It is unnecessary to repeat our arguments here."

In the case of Payne & Dewey vs. Treadwell, 16 Cal., 220, by the unanimous opinion of the court, after the most elaborate examination, the same principle is upheld and applied.

In Leese vs. Clark, 18 Cal., 535, 573, the same principle is reasserted.

The above cases of Hart vs. Burnett, 15 Cal., and

Brown vs. San Francisco, 16 Cal., are cited in the case of Singleton vs. Touchard, 1 Black, 342, where the question was made whether the pueblo title of San Jose was a better title than a private grant within the same, confirmed and patented. The court below held that the pueblo title was not equal to the private grant, and this court affirmed the decision, saying that "the question depends upon the local law, and on the history and custom of the Mexican government and the governors of California. And since the appeal in this case, it seems to have been adjudged by the local tribunals, (see Hart vs. Burnett, and Brown vs. San Francisco, supra.) This decision of a question of local law, by these domestic tribunals, may well have been considered by the plaintiffs in error as a sufficient reason for abandoning his case without argument here."

See this same principle followed in League vs. Egery, 24 Howard, 264, and Christy vs. Pridgeon, No. 22, December term, 1863, of this court.

II. The next question arising is, what is the nature of the right or title by which this land is held?

If the title was perfect it need not now be presented to this court to be perfected, which is the very purpose for which it is brought here. It is brought here to be made better, and not to be pr nounced upon for what it was worth as a legal title on the 7th of July, 1846; and the question is whether its beginnings were such that it would be consistent therewith to go on and carry it into a complete grant, and whether there is any impediment in the way of so doing, according to the status of things at the change of government.

According to the structure of the title, it was a completed grant; that is, there was made a record entry of whatever rights were conferred upon de Haro in the books in which were entered final grants; by this is meant petitions for grants that *had been* finally acted upon and *dis-*

posed of, in contradistinction to cases pending and only partially disposed of, and in which the final order of the governor had not been made.

It was entered as a concession. On Jimeno's Index the entry is in tabular form, as follows:

1st. The land is designated by the well known name of "Portrero de San Francisco."

2d. The grantees are fully stated to be "Don Francisco and Ramon de Haro."

3d. The disposition made of the land is declared by the technical or formal term, "Concedido."

4th. Is the number of the case, viz: 360.

On the Toma de Razon the same particulars are stated in the common formula used for cases finally disposed of, and in these words:

"226. Don Francisco and Ramon Haro, on 1st of May. Title delivered to them of the tract named El Portrero, in extent of one-half league square."

See the record, page 176.

Here is the final act of the government separating this tract from the public lands and entering it upon the list of lands no longer subject to be disposed of. This, a more solemn act than issuing the provisional grant—more permanent and enduring. The loose papers constituting the expediente may be lost, but here is the final entry in the archives intended therefore to be preserved with that care which their importance requires.

Is not this to be taken practically as the act of the government, back of which it will not go, and as the final and determining act with reference to this title. Treating it as such, and construing the first paper given so as not to impair the record or last act of the government, we must conclude that the disposal made of these lands is not temporary, and that the provisional ingredient in the title does not limit it as to the time for which it shall last, so as to make it of temporary duration, but rather amounts to a proviso to this effect; that if there

would be a valid claim to these lands on the part of the Mission Dolores, by virtue of which they might be assigned to that establishment for commons but for this grant, then this grant shall not operate so as to defeat such right. Consistent with this interpretation of the proviso is the clause, that while the grantees may alienate the land, yet such alienation shall not be to the detriment of said establishment.

Consistent only with an estate to endure, is the condition that "within a year at the most it must be occupied." The conditions in the third clause are inconsistent with an estate so uncertain as to duration, that it may be practically considered as immediately ended, and therefore incapable of confirmation; namely, that if the petitioners should transgress any of these conditions they shall lose their right to this provisional grant."

Does not this paper import that the parties shall not otherwise than by transgressing these conditions, lose the rights thereby conferred. Why specify some of the conditions on the non-compliance with which the parties shall lose the rights conferred, if those rights are liable to be terminated according to the intent of the parties, by conditions not expressed; to so construe the grant would be to say, that the bargain is one, a part of which is, and the other part is not expressed in the writing. What "security" then have these parties to the land by that grant, if it is to be interpreted so as to amount to nothing practicable.

By the above construction of this entire transaction, we make the action of the governor consistent with his duty of complying with the request of the petitioners, and with the universal conduct of governors in reply to such petitions, and yet put in such shape as not by possibility to impair or destroy the contingent rights of former occupants of the land.

This is also consistent with such a final disposition of the case as to entitle it to go into the records of com-

pleted business, and therefore it is entered on Toma de Razon, and by Jimeno on the Index. If this title so entered is not good, it is because there is already a better one in existence, and it is proper, therefore, that the lands shall be entered on the public records as property not subject to further disposition by any further or new order of the government; for if the existing or previous rights of the Mission Dolores shall take the land, it is not subject to the disposition of the government in any other way; but if such contingent pueblo rights in favor of the Mission Dolores do not come in to defeat the present disposition made of it, then this grant operates as a final act.

Having now examined the structure or frame work and form of this title and ascertained that it is consistent with a permanent and existing right to occupy the land amounting to ownership of it, let us examine it in the opposite light, and see if the negative of this is more in accordance with the structure of the title.

1st. There is no law which will, by its operation, defeat a title granted for this tract of land; that has been settled by the cases already cited, showing the power and competency of the government to make private grants within the area of the four square leagues, including this land, so that when the grant to De Haro was made there was no existing adverse or superior title, perfect or incomplete, in any pueblo.

This grant, therefore, has no reference to an absolute or existing outstanding title which might defeat it, in the expression referring to the commons (*ejidos*) of the *establishment.*

2d. Nor was there any superior or existing right in the mission to the land for commons, independent of a reservation in the grant. This right to commons would

exist as to some lands should the Mission Dolores be converted into a pueblo or corporation. This then was a mere contingency provided for in the grant. As the Mission Dolores never was converted into a pueblo the right referred to never came into being. It was not provided in the grant that if the Mission Dolores became the pueblo Dolores then the lands should be assigned to it as commons, which would have created an interest similar to a springing use, upon such new pueblo coming into existence; but instead of that, on such contingency, there was merely reserved a power in the government to so assign the lands. The assigning of lands as commons (ejidos) is a discretionary power in the governor, for it has been expressly held that he may grant such lands in private ownership. After they have been assigned the pueblo then may, as a public trustee, perform certain acts affecting these lands, and may even grant titles to town lots and lots for raising fruits and grain.

It thus appears that the estate of De Haro has not, in fact, been terminated by an assignment of the lands as commons of Dolores; and also, that it was not agreed or understood that even if the contingency of such new pueblo coming into existence had happened, that then an equity should exist in its favor as to these lands, or in other words, that then a new estate should spring up as to these lands in favor of this future pueblo, which should terminate the estate then given to De Haro.

When we look, therefore, practically to the actual uncertainties that were inherent in this De Haro title, we see that an estate, equal almost to a full grant, was given; and when we view the facts as they existed at the change of government, and ascertain that by *the terms of the grant* no contingency then remained, do we not find the De Haros standing with a title as valid as though the Mexican government had given a new writing reciting the termination of the contingency? This contingency, the

conversion of Dolores into a pueblo or its extinction, was a public event and the government would take notice of it; and, too, the decree of the 28th May, 1845, (Halleck's Rep., App., 20,) and of October 28th, 1845, (id. p. 21;) (Dwinelle's Arg., Add., p. 89, 90,) were laws of the government applicable directly to the title of De Haro, and all other facts and persons within the jurisdiction. These decrees declared the contingency affecting the De Haro grant removed; they are public records and became a part of the De Haro title, as much so as if they had a clause pointing directly thereto. Is it necessary that there should be a special decree in order to make these general acts applicable to any or every particular case; to so construe these general decrees and proclamations would be to give them no practical effect.

Now, while it is apparent that no estate is created in this grant in favor of the establishment which divides up the fee or full ownership between it and De Haro; and also it is apparent that the estate of De Haro has not been terminated by the actual appropriation of the lands to other uses, as provided for in the deed, yet the reservation of this power in the grant was intended to have some effect, which was to authorize the governor to terminate the estate in favor of a particular person, if he saw proper so to do. Would the governor have inserted that clause in the grant if he could, consistently with good faith on the part of the government to its colonists, have exercised such power had he not so have inserted it? By inserting it, it becomes a part of the agreement of the parties; if not inserted, would it have still been a part of the agreement? No. Then the insertion of it becomes material. Being a clause providing for the termination of the estate given to De Haro, it thus becomes a reservation of power in the governor to so terminate the estate; and on the other hand, it is in favor of De Haro, a limitation on such power, in effect providing that the estate shall not be otherwise terminated.

Is it consistent with this view of the action of the parties that the subject of these terms is an estate of no proportions or duration? Do not these terms demonstrate the nature of the estate, at least as to duration? They bear specifically on that feature of the title, and thus declare the meaning of the parties by that grant as to the duration of the estate. With this interpretation of the meaning of it by the parties, what else is there to place it in a different light?

There has been no termination of the De Haro title according to the terms of the grant. It is therefore as good as it was the day it was granted; and as there can be no termination of it according to the terms of the grant, it is therefore better than it was the day it was granted. Thus, in fact, it is a security to the grantees, as it purports to be, if construed to mean what it says—nothing more and nothing less.

But there is another mode of terminating the estate granted provided for in the title, which, explaining the agreement of the parties, casts light upon the whole transaction. It is the clause providing that if the grantees shall transgress any of these conditions, they shall lose their right to the grant so given.

This clearly contemplates the resumption by the government of the title it gives. The adjudications as to the mode of enforcing these conditions show that the estate does not cease until proceedings are actually instituted in the nature of an inquest, and a decree rendered divesting the title. This subject is thus spoken of by the Supreme Court of California, declaring merely the Mexican law and practice.

10 Cal., 389–615, Ferris vs. Coover. In speaking of the invalidity of a title for non-compliance with conditions of occupancy: "They are conditions subsequent for the non-performance of which the estate might have been defeated by proceedings of the government to that end; but until such proceedings were had, and a forfeiture de-

clared thereon, the estate remained in the grantee. Under the Mexican law, as under the common law, an estate granted by the government could not afterwards be divested upon mere allegations and surmises. Some formal and regular proceedings were requisite. Under the Mexican law they had their inception in what is termed a *denouncement* by a party desirous of acquiring the land. When the denouncement was made, an investigation was had, whether or not the conditions had been complied with, or so disregarded as to authorize a declaration of forfeiture. No re-grant was made upon a mere allegation that the condition of the former grant had not been performed without an inquisition as to the fact."

Page 620 (of 10 Cal.) "The only mode of avoiding an estate under the Mexican authorities, other than by the direct rejection of the supreme government, was by proceedings having their origin in a denouncement, which is entirely unknown to our laws." And the court intimates that the right of forfeiture ceased with the change of government, and therefore holds that the title conferred the right to possession and use of the land, and so ejectment could be maintained by the grantee.

In Soulard vs. Clark, 19 Mo., 570, 578, the Supreme Court of Missouri say, in speaking of the territorial practice in Louisiana under the Spanish law: "That the same formality and solemnity were observed in the annexation of lands to the domain as when they were granted or conceded. All annexations were declared by an ordinance of Louis the Fifteenth, to be null and void and of no effect unless they were judicially decreed. The same principle obtained under the Spanish authorities, and they deemed it obligatory."

The government here provides that it may "regain the estate originally parted with." (2 Washburn, 288.) Why all this machinery to regain a mere temporary permission to occupy land which may be revoked at will?

In 3 Cal., 27, 41, Vanderslice vs. Hanks, the court in

construing the conditional grants of lands made by the Mexican governors, apply the law as stated by Blackstone thus—

"These express conditions, if they be impossible at the time of their creation, or afterwards become impossible by the act of God, or the act of the feoffor himself, or if they be contrary to law, &c., are void. In any of which cases, if they be conditions subsequent, * * the estate shall be absolute in the tenant. 2 Bl. Com., 157. The same doctrine, I have already shown, was held in the Arredendo case."

If this title is not confirmed to De Haro, will it not be on the ground that they have, before the confirmation, no interest in the land of an inchoate nature, which serves as an outline sketch or first draft, on which to attach the complete title that the patent will give, and therefore the confirmation now given to the parties would, in effect, be originating a title in fee, and as an act de novo?

But is this so? Let the government of the United States now declare, that for itself and all the world it adopts and ratifies, as of the date the 1st of May, 1844, the title papers that were then made, under which the De Haros were put in possession of the land to occupy the same for their individual use, and as their own property, with the reservation only of the power to assign therefrom commons for the establishment of Dolores, should it become a pueblo, and also declare that the exercise of such power by which such possession might have been terminated, has become impossible, and then would not the Mexican papers and acts done be equivalent to a title to the land? Now, if this court judicially notices the public acts of Mexico above referred to, and takes notice of the fact that the mission of Dolores never became a pueblo, then it does know that the grant to De Haro has ceased to be subject to said contingency, and has therefore become absolute, and that their Mexican estate is as enduring as

though such condition had not been inserted in the grant.

Therefore the simple ratification of the acts of the Mexican government give to De Haro a valid Mexican title. It is unnecessary to give the title such effect, that any declaration of that kind shall be made by the court. It is not asked that any new thing shall be added to the Mexican title. Let it be simply declared that De Haros shall have the same rights to this land that they had under Mexico. Is anything more asked? Can this government do less? If it does it curtails and stops those rights, instead of clothing them with the legal protection that is accorded to other similar inchoate Mexican rights. The court does not award the patent, that is provided for by law, which also declares its effect to be simply a conclusion of the matter as between the United States and the claimants.

Suppose that Congress had passed an act somewhat similar in its operation to the British statute of uses in relation to Mexican title papers, allowing actions to be maintained upon them according to the actual meaning and intent of the same, in the courts of the United States, and declaring them to be for all purposes United States title papers, and that the legal estate should be held to arise upon the same, according to the very meaning and intent thereof under the Mexican system at the time of the change of government; and that then the United States, as the purchaser from Mexico, institutes an action at law or in equity to dispossess De Haro of the land; what judgment could the court give?

Would there be in that issue any doubt as to the validity of the De Haro title? And could this court declare the United States entitled to recover against such acts of the Mexican government?

Now, is not the act of 1851 the same as to effect and construction as such an act would be?

It nominally makes De Haro the plaintiff by declaring, that if he does not sue his title shall be arbitrarily held

to be invalid. Thus, by forcing De Haro to sue, it places him in the attitude of asking for some new thing, which is the award of a new form of title; namely, a patent for a fee simple.

The court may hesitate to award a patent, not that it doubts the validity of the claimants title papers, but because it does not see in these papers the outline or foreshadowing of a title in fee.

The petitioner does not seek this trial; nor does he shape this issue, but his papers will stand the test of the act of Congress—they are genuine, and therefore his claim and title are valid. If the court feels that it should not decree to this party a title in fee simple on the case as here presented, it should bear in mind that the party has not on his own motion sought for such a decree, and that the government has constrained it. When De Haro is content to rest on his Mexican rights and status, and on his own motion asks for nothing, shall this court declare that such Mexican rights were invalid under Mexico, on the evidence before it, and thus declare that the property belonged to the United States by mere construction of these title papers on the 7th of July, 1846?

Will not the land remain in the possession of De Haro for all time to come, without any enlargement of the original terms of the grant, and standing simply thereon, and on the public notorious facts and the acts of the Mexican government before the treaty?

The records and decrees of the Mexican government referred to and cited under the first point, show that the contingency had ceased to exist, for that by decree of Mexico, the establishment of Dolores had ceased to exist, and, so the assignment of commons (*ejidos*) to it had become impossible.

III. The remaining question is as to the legal effect of the title-papers; for as no proceedings were taken by Mexico to forfeit the title, for non-compliance with any of the conditions subjoined to the grant, and, as the grant was not molested or impaired by any rights of the establishment of Dolores for commons (*ejidos*), and as the title-papers relied upon are valid, the complainants are entitled to the most favorable construction of the evidence.

These title-papers, as to their legal effect, may be conconsidered in two aspects.

I. As to the effect of the record entries in Toma de Razon and Jimeno's Index, in connection with the petition, laying out of view the provisional grant, of which the court has spoken in the following cases:

U. S. vs. Bolton, 23 How., 341, 349.
Luco vs. U. S., 23 How., 515, 543.
Peralta vs. U. S., 3 Wall., 434, 440.
U. S. vs. Vallejo, 1 Bl., 541, 555.
Palmer vs. U. S., 24 How., 125, 128.
U. S. vs. Knight, 1 Bl., 227.
U. S. vs. Osio, 23 How., 273.
U. S. vs. Neleigh, 1 Black, 298.
U. S. vs. Galbraith, 2 Black, 394, 404.
Fuentes vs. U. S., 22 How., 443.
U. S. vs Pico, 22 How., 406, 416.
Pico vs. U. S., 2 Wall., 279, 282.
Arguello vs. U. S., 18 How., 539, 543.

II. Secondly, the effect of the provisional grant, for which see—

Rodriguez vs. U. S., 1 Wall., 582.
U. S. vs. Armijo, U. S. S. C., No. 86, Dec. term, 1866.
U. S. vs. Bidwell. See transcript—not reported.
U. S. vs. Alviso, 23 How., 318.
U. S. vs. Wilson, 1 Black, 267.
U. S. vs. De Haro, 22 How., 293.
Expediente of Visitation ranch to J. P. Leese.

And first it is insisted that the provisional grant is not an essential, or controlling part of the documentary title; that, without it, there is complete evidence of a grant; that it was not the last act of the government in response to the petition, and does not contain full evidence of the entire, or final action of the government in the case presented by the petition; that it is consistent therewith, that further action in the premises should be taken by the government, and that such further action embraces all that there is in the provisional grant beneficial to the petitioner, and still more; that the provisional grant and the subsequent record entries in Toma de Razon and Jimeno's Index, bear the same kind of relation to each other, that the certificate of the register and receiver issued to a settler on public lands does to the patent that subsequently issues. If it, therefore, can be shown that the record entries are the act of the government constituting a grant, and contain either by themselves, or in connection with the petition, full evidence, it is not perceived how the effect thereof can be changed by any previous acts of the government. These records have frequently been before this court, and the following cases are cited to show the effect that has been given to them; that is Toma de Razon and Jimeno's Index. Both records state in full the names of the grantees and the land granted, in such manner as clearly to designate it, and the question, therefore, is, whether they constitute evidence of the action of the government; and if so, that such action was a grant.

Jimeno's Index professes to be an "Index of the lands adjudicated, and persons to whom they have been conceded;" but it is unnecessary to rely upon its title, for the character and effect of it as a book of records, in view of the many applications of it which have been made by this court.

TOMA DE RAZON AND JIMENO'S INDEX. CONCLUSIVE EFFECT OF THESE BOOKS.

In U. S. vs. Bolton, 23 How., 341, 349, this court, by Mr. Justice Catron, say: "It is a historical fact that the expedientes and grants made for some ten years before the year 1846, are referred to in an index, and in a register known as the Toma de Razon, the former made by Jimeno," and on p. 350 the court say, "*this record is the evidence of the grant*," and proceed to state that it is the *record* in which the grant consists—it is the original act, that constitutes the grant; and not the mere evidence of it, thus: "It being made, the governor shall sign a document and give it to the party interested, to serve as a title, wherein it must be stated that said grant, to-wit, the *record*, is made in exact conformity with the provisions of the laws. In virtue of this *document*, issued to the party, possession of the land shall be given. But the *document* is not sufficient of itself to prove that the governor has officially parted with a portion of the public domain. * This must be done * by *record evidence*, as found in the archives. * *

"The *titulo given to the party* is merely a *certificate* by the governor of the acts that *have been done* in the regular course of official procedure towards the disposal of a part of the public domain," &c.

If this statement of the matter be correct, certainly the highest and best evidence of the acts of the government are its own records rather than mere certificates made to show what the records prove.

The court, in Luco vs. the U. S., 23 How., 515, 543, say, "that testimony can not be received to supply or contradict the public records," in speaking of the entries in these books.

In Peralta vs. U. S., 3 Wall., 434, 440, the court, by Mr. Justice Davis, in *italics*, speaks thus: "*The record was the grant*, and without it the title was not divested.

The governor was required to give a document to the party interested, which was evidence of title, and enabled him to get possession; but this titulo did not divest the title, unless record was made in conformity with law;" and on same page, "this record * * enabled the government to ascertain with accuracy what portions of the public lands had been alienated."

In U. S. vs. Vallejo, 1 Black, 541, 555, the court, by Mr. Justice Nelson, say these documents "are not deemed grants till the proper record is made;" and again, further up, on p. 554, he cites a previous decision, with approval, which, it will be perceived, speaks of the registry as evidence of the same dignity as of the grant itself. Thus, by Mr. Justice Campbell, for the court, in United States vs. Sutter, 21 How., 170, 175: "In every well regulated government the deeds of its officers, conveying parts of the public domain, are registered or enrolled, to furnish permanent *evidence to its grantees* of the origin of their title. An *exemplification* of such a *record* is admissible as evidence of the same dignity as of the grant itself. This rule exists in states that have adopted the civil law."

In Palmer vs. U. S., 24 How., 125, 128, by Mr. Justice Grier, the court refuse to receive testimony to support the document offered in evidence, speaking of it as the "*private deed*" of the officer, because not verified by the record, thus—

"The testimony brought in this case to support this *private deed* and give it the force and effect of a public record," &c.

And the court, in U. S. vs. Knight, 1 Black, 227, by Mr. Justice Clifford, say, p. 250: "But a more decisive answer to the claim remains to be stated, and that is that there is no record evidence that the grant was ever issued, and without such evidence the claim can not be confirmed."

THESE RECORDS ARE SHORT ENTRIES.

The court, by Mr. Justice Clifford, say, in U. S. vs. Osio, 23 How., 273, 279: "Adjudications of land titles were required by the Mexican law to be recorded. That requirement, however, was regarded as fulfilled, according to the practice in the department of California, when a short entry was made in a *book* kept for that purpose, specifying the number of the expediente, the date of the grant, a brief description of the land granted, and the name of the person to whom the grant was issued."

In Luco vs. U. S., 23 H., 515, Mr. Justice Grier, for the court, says, page 534: "The archives for the Mexican government furnish not the slightest trace of any such grant, although all the other grants made in the same year and month are carefully *recorded and registered*, and the *expediente* found on file."

U. S. vs. Neleigh, 1 Black, 298, says: "These expedientes are all found safe among the records, but the Toma de Razon, or *short record of them*, has disappeared."

In U. S. vs. Galbraith, 2 Bl., 394, 404, the court, by Mr. Justice Nelson, say: "Now if a note of this grant had been found in the book of records, *the Toma de Razon*, as it is called," &c.

In Fuentes vs. U. S., 22 How., 443, by Mr. Justice Wayne, the court say, page 456: "It was the duty of Jimeno to record all grants which were made by the governor, and to give attestations of that fact."

In U. S. vs. Pico, 22 How., 406, 416, in objecting to the grant, the court, by Mr. Justice Nelson, says: "No record of them was found among the Mexican archives, or in any book."

And in U. S. vs. Vallejo, 22 How., 416, where it was urged in argument, on page 418, thus: "If this grant were genuine, it would have appeared regularly numbered and entered in Jimeno's Index, with a corresponding expediente on file in the archives. It would also have

been noted in the Toma de Razon." The court, by Mr. Justice Nelson, say, page 422: "Neither the grant nor the certificate of approval has been found among the archives, nor the record of them *upon any book of records*," and for that reason sustain the objection to the title.

In Pico vs. U. S., 2 Wall., 279, the court, by Mr. Justice Field, say, page 282: "It was an essential part of the system of Mexico to preserve full record evidence of all grants of the public domain. * * When, therefore, a claim to land in California is asserted under an alleged grant, reference must in the first instance be had to the archives of the country."

Is this short entry of the "adjudication" made expressive of a refusal of the land? We are not left to conjecture the meaning of this judgment. The regulations of 21st November, 1828, (Halleck's Rep., App., 5,) are treated by the court as the foundation of these records. In compliance with the third regulation the governor proceeded to obtain the necessary information as to whether the grant could be made. After the report made, or in the language of the fourth regulation, "This being done the governor will *accede* or not to such petition." In describing the manner in which this order was expressed this court, in Arguello vs. U. S., 18 How., 539, 543, say, "By the 4th section the governor, being thus informed, may accede or not to the prayer of the petition." This was done in two ways; sometimes he expressed his consent by merely writing the word *concedo* at the bottom of the expediente, at other times it was expressed with more formality. * * * It is intended merely to show that the governor has acceded to the request of the applicant, and as an order for a patent, or definitive title in due form to be drawn out for execution. It is not itself such a document as is required by the 8th section, which directs that the definitive grant asked for being made, a

document signed by the governor shall be given to serve as a title to the parties interested."

This document provided for by the 8th section, called the definitive grant, is one which can be given only after the concession of the governor has been approved by the departmental assembly, as provided in the 5th and 6th regulations. No such formal document as this is ever required by this court or by the tribunals in California, as evidence of title under Mexico. The practice has changed as explained in 2 Wall., 281, Pico's case; and the approval of the action of the governor by the departimental assembly, has been frequently decided not necessary to be shown.—(Fremont's case, 17 How., 563; U. S. vs. Galbraith, 2 Bl., 403; U. S. vs. Johnson, 1 Wall., 326.)

The court, in Palmer vs. U. S., 24 How., 125, 127, refuse there to confirm the title, because the governor had not signified his assent to the petition—thus, by the court: "This is all the document found among the archives or public records, and shows this fact only, that the petitioner asked for the land; that the informe did not satisfy the governor, who did not accede to the request, and, therefore, the petitioner took nothing by his application."

It thus appears that this court has not strictly required the form of proof of the assent of the government prescribed in the regulations of 1828, that is, has not required the party to produce the paper which the 8th regulation describes as "*a document signed by the governor * to serve as a title to the party interested.*"

II. THE CONSTRUCTION OR EFFECT OF THE PROVISIONAL GRANT.

What construction shall be placed upon the provisional grant to De Haro, or rather what effect shall be given to it as one of the acts done by the governor? It has just been shown that it is not the final title paper

given in conformity with the 8th regulation. If it was that, it might be urged that the records of Jimeno and Toma de Razon, should be qualified by it. If it is said that it is the paper given to the petitioners, and is, therefore, the only evidence of title they have, yet this does not give it a controlling effect as their final title paper under the 8th regulation. This paper is not a record under the 8th regulation, and certainly not called for by any of the other regulations of 21st November, 1828. If not a record it can not be held to be a paper which shall control or alter the meaning of another document which is a record. This paper applies to the same parties and subject-matter and appertains to the process of the title, but it holds a subordinate relation to any other act done in the title, of higher dignity.

By construing this provisional grant so as to be in harmony with the Toma de Razon and Jimeno's record, we have a title amounting to a grant, and this subject to a proviso by which it may be terminated. This is the very greatest effect that can be given to this paper. To confirm such a title as this, will be in harmony with the decisions of this court and of the United States courts in California, and with the action of the executive department. To demonstrate this the following cases are cited, which will show not only were provisional grants frequently made as the first act done in a title that ripened into a complete grant; but that when the complete grant followed, that, for practical purposes, the later grant was held to relate back to the date of the provisional grant; as a younger patent is held to relate to a first entry and thus make a consolidated title. This shows a vital germ in the provisional grant susceptible of increase, growth, and attaining maturity—a thing of life and vitality, which once shown to exist, its extinction will not be presumed, and can be brought about only by some affirmative proceedings or evidence.

In Rodrigues vs. U. S., 1 Wall., 582, the construction

and effect of a provisional grant was declared, in a question of location. The court held that a subsequent complete grant, enured as a *ratification* of the provisional grant from its date, and thereby gave to the younger final grant the priority of right as to location. On page 589 the court state, the case requires the examination of three confirmed claims. The first is that of Gonzales, dating in 1833, about which there was no dispute of any kind, it being used only to assist in locating the two younger claims. The opposing titles are those of Sanchez, represented by Rodrigues and Castro. Castro's Mexican grant was in 1842, (page 589–590,) and his land had been surveyed—and the effort was now to locate a part of the Sanchez grant on the land, so previously appropriated—by the confirmation and survey to Castro—thus the court, by Mr. Justice Miller, say, page 591, "It is objected to this location of the grant, (to Sanchez,) that it places it on land which has already been confirmed, surveyed, and patented to * Castro." On page 582, it is stated that in 1838 the governor made a provisional concession of the land to Sanchez, which tract, in 1844, he granted to her, reciting his deed to be the "*ratification of the provisional title.*" That this was not considered an immaterial feature in the case is indicated by the repetition of this fact, by the court, on page 590, thus: "In the provisional concession of Alvarado, of 19th September, 1838, to Sanchez, the land is said to be known by the name of Butano. * * In the final grant to her in 1844, * which is expressed to be a *ratification* of the provisional title given her in 1838, it is called the Butano ranch."

The court then, by treating the entire title papers as consolidated, decide as above stated, that the prior right is in Sanchez.

The same principle is recognized and applied in the case of U. S. vs. Armijo, No. 86, December term, 1866, which, on a question of location, brought up the question whether a younger grant may be attached to a prior

provisional grant, and thus obtain preference over an elder final grant. In that case Solano entered upon the land under a provisional grant given in 1837, which was followed by a full grant in 1842. On the 4th of March, 1840, the grant was made of the opposing title to Armijo, whose title papers also referred to the existing rights of Solano. The question was especially raised as to the effect of the provisional title, and it was held that Solano's grant of 1842, enured to the date of his provisional title, in this conflict with the elder full title. And the court in support of the correctness of its views, in the opinion by Mr. Justice Field, cites the action of the tribunals in California to the same effect, and quotes from the decision of the district judge, as follows: "The archives abound in instances where not only the equity created by a prior occupation and cultivation under a provisional license to occupy, but even that created by prior solicitation, has been recognized and enforced." And the following further quotation is from the same opinion of Judge Hoffman, by which the district court shows how well sustained it was in so ruling, viz: "In the case of Estrada, * there was granted to Ynigo a piece of land to which he alleged some equitable right by reason of an ancient permissive occupation, and this notwithstanding that a grant had already issued to Estrada for a tract embracing the same land. So in the case of Jose Maria Alviso, whose boundaries were found to include land whereof his neighbor, Higuera had long been in occupation, by permission of the ayuntamiento of San Jose. In the cases of the ranchos of Santa Teresa and Laguna Sera, the decrees of concession were issued to Bernal and Alvirez, respectively, for the two ranchos named. Alvirez, however, presented to the departmental assembly his petition, in which he alleged that beyond the limits of the rancho conceded to him, and within those of the rancho conceded to Bernal, he had cultivated a field, dug a ditch, &c. The assembly recognized the

right growing out of this occupation and cultivation, so far as to assign to Alvirez his cultivated field, notwithstanding it formed a wedge-shaped piece of land, extending within the limits of Bernal's rancho.

"The grant to Prado Meso, and the subsequent grant of a portion of the same land to the Indian Gorgonio, affords another illustration, and many more might be added, of the respect paid to the inchoate rights or equities acquired by an ancient occupation, or by provisional licenses to occupy."—(See Record in U. S. vs. Armijo, No 66, December term, 1866, S. C. U. S., page 192.)

In the first case above cited by the district judge, by referring to 1 Hoff. Rep., App., p. 13, No. 90, we find it amongst the regular confirmations. Thus—"Martin Murphy, claimant, &c., granted January 15, 1842, by Alvarado to F. Estrada; claim filed March 3, 1852; confirmed by the commission January 24, 1854, by the district court October 17, 1856, and appeal dismissed November, 18, 1856."

IS A PROVISIONAL TITLE SUSCEPTIBLE OF CONFIRMATION?

In the case of The U. S. vs. Bidwell, there was a provisional grant signed by Micheltorena and Jimeno, the 18th November, 1844, which, reciting the petition, says: "I have resolved to grant him provisionally said lands, subject to the following conditions: 1st. He ought not to make expenses in buildings which might result in his loss, in consequence of the ulterior disposition of the government. 2d. He can not in any manner alienate it, nor donate it, nor impose obligations of any kind. 3d. He can occupy it with his stock and property, &c. 4th. When the land shall be made his property, the justice of the peace shall lay out the boundaries. * * 5th. If he contravenes these conditions, he shall lose his right to the land, and it shall be denounced to another person. In consequence thereof, I command that the present, serving him as a title for a provisional patent (despatch),

it be recorded in the respective book, and that it be delivered to the interested party for his security and other purposes."—(See page 10 of record.)

Dickey, the grantee, taking this paper, petitioned Sutter to grant him a further title, which he did, so that the party had the Sutter general title also.

The case was presented for confirmation on these two grants. On page 36 the commissioners decide in favor of the confirmation on the provisional title, saying: "From the language of the provisional title paper in this case, in connection with the circumstances under which it is issued, I think it may be fairly understood to have been the intention of Micheltorena to make a grant of the land in fee to Dickey, subject only to some subsequent act of the governor; and no such act having taken place, the title may perhaps be considered absolute. If it were necessary to decide the case alone on this grant, I should be strongly inclined to think it as standing on the same footing with those resting on titles issued in common form, which are not deemed provisional."

On appeal to the circuit court, the decision of the commissioners was affirmed by an opinion signed by the circuit judge, McAllister, and the district judge, Hoffman, who first set out the title, clearly stating its peculiar structure. After stating that Dickey had built a house and corral on the land and cultivated it, and had cattle there, the opinion states: "No ulterior decision was ever made by Governor Micheltorena in special relation to the grantee, and he remained in possession under the said provisional title unmolested by any Mexican authority down to the acquisition of Mexico by the United States. That an inchoate title and equitable interest had vested in the grantee under these circumstances, by this court is a question unnecessary to decide." The court then proceeded to state the facts in relation to the Sutter general title, and say: "Viewed, then, under the provisional title of 18th November, 1844, and the general title of 22d De-

cember, 1844, this court considers that the interest of the grantee is one which should be upheld."—(See page 42 of the record, No. 306.) The appeal to this court was dismissed by the United States.

There is another similar decision by the California tribunals, which is found in vol. 3, p. 2849, of Transcripts of 1859 of this court. There was a petition for confirmation to the board of commissioners, which explicitly presented to the court the question whether or not it could grant a further or a final title on a mere provisional grant. The petitioner sets out the fact that he had obtained only a provisional grant, and that he "neglected to perform the mere formality of returning them [his papers] to the governor, and receiving from him, which would have been a matter of course, the usual and formal definite title, until the change of government made this step impracticable." The governor's entry on the margin of the Mexican petition was, the land described being vacant, the petitioner may *occupy it provisionally* by virtue of this decree.

A number of years' possession of the land and residence thereon followed this permission to occupy. The commissioners decided that the evidence established "an equitable right," and confirmed the land, and the district court affirmed that decision. The case was brought to this court, and the decision affirmed in 23 How., 318. The documentary evidence was duly weighed by this court, and the effect given to it by the court below approved. This court say, page 319: "No imputation has been made against the integrity of his documentary evidence." The report of this case, as made in 23 How., 318, does not at all show the force and effect given to the provisional title, nor how directly by the case, as made by the petitioner, the court was called upon to decide whether a provisional grant was a valid title paper. The validity of such a document, within the meaning of the

act of 1851, was thus explicitly determined in this case of The United States vs. Alviso.

Long possession and using the land as a residence was a prominent feature in the case next cited, which throws much light upon Alviso's case, and especially on the paramount effect given by this court to the provisional paper in that case. In the case of The United States vs. Serrano, No. 66 of the December Term, 1866, the land was occupied as the home of the petitioner from 1819 to 1852—a period of eighteen years before the change of government—the land was cultivated, and the improvements consisted of three houses, a vineyard, and an orchard, and adjacent to the enclosure the settler's cattle, sheep, and horses ranged. This possession was undisturbed by Mexico, and in that condition the land passed under the jurisdiction of the United States. Here was a much stronger case in equity made out than in Alviso's, for the possession was longer, and the improvements and nature of the occupancy of as good character. But the decisive feature of difference between the two cases was this—that Alviso had a provisional license given by the governor, and Serrano had not. The court, by Mr. Justice Davis, say: "The petition presented to the board of land commissioners asked for the confirmation of this claim on two grounds—first, because a *provisional grant* was made; and second, by virtue of long continued and uninterrupted possession. The proof not only negatives the existence of a grant, but clearly shows that Serrano occupied the premises by a written permission from the *priest of the mission*, or the commandante of San Diego." After thus showing that the paper was given by one who had no power to grant permission to occupy lands, the court adds: "The *archives of the country* are totally silent on the subject of this pretended grant, and there is *no record evidence* even of an application for a grant." And for reason for deciding that there was no case on which this court could confirm the claim, the court add: "Under

the government of Spain in California the *commandante or priest* had no authority to grant lands, or to make contracts that could bind the government to grant them. The governors of the country only had this power." The remarks of the court further on show, that had the permissive paper under which the entry was made been signed by one having power to bind the government, it would have constituted an entry upon the lands adverse to the government; which character of possession would have been one feature of title. How emphatically this case, taken in connection with Alviso's, stamps a provisional grant, executed by the governor, as a document amounting to a title against the government.

Another case strikingly demonstrates the effect given by this court to an informal or incomplete document giving permission to a party to go into the possession of lands, when issued by authority that can grant them. The case of Serrano, just cited, and of Alviso, and the following case of The United States vs. Wilson, 1 Black, 267, taken together, establish the principle contended for.

Wilson's case was a confirmation on possession founded upon a permission to occupy. It was for land adjacent to a mission. The governor, Alvarado, in 1842, had directed the alcalde to distribute the lands to the Indians in separate parcels, the maximum size being generally two hundred varas, to include the Indian hut and garden, for cultivation. But the quantity claimed here much exceeded that, amounting to one thousand varas—about fifty acres. Wilson claimed under the Indian Romualdo, who claimed the above parcel from the alcalde; he refused to allot so large a tract to Romualdo; the Indian afterwards brought a *special order from the governor*, which directed the alcalde to put him into the possession of the fifty acre tract, which was done. There was no record evidence of this title, nor was there any formal grant. The court, however, considered that such possession was consistent with a title in fee under the usage

and practice of the Mexican government in relation to lands of this character connected with missions. The court, by Mr. Justice Nelson, say: "In the present instance the possession and cultivation were of considerable duration, and, according to the testimony of the alcalde, the distribution and assignment of the governor was intended to be permanent, as a home to the occupant. The claim appears to be an honest one, unaccompanied with suspicion, and under the circumstances, we think was properly confirmed. It comes within the principle of The United States vs. De Haro."

The controlling feature in this title is the *special* written order of the governor "to put Romualdo into the possession." His was an exceptional case. His tract was claimed by him under the general order applicable to all the Indians of the mission, and in conformity with the custom of assigning small parcels of land to them. The alcalde refusing the Indian what he claimed, he went to the governor and procured his special title paper, and a special consideration for this extraordinary grant is stated, viz: page 269—"Romualdo had worked for the governor, and his good conduct was recommended in the *special order* for the distribution of his Huerto to him." But his cultivation did not extend to more than "a fourth of the land."—page 269. The court perceiving that this case was not entirely within the law of usage applicable to the small parcels of about five acres usually allotted to such Indians, refers especially to the rule applied in the De Haro case, (22 How., 293,) that is, of holding that the title papers, such as they were, and the accompanying circumstances, made out a just case for confirmation.

It will be observed that Wilson's case cites and relies upon De Haro's case. Thus, on page 270, "the claim appears to be an honest one, unaccompanied with suspicion, and under the circumstances, we think, was properly confirmed. It comes within the principle of The U. S. vs. De Haro's heirs, 22 How., 293. By looking at

this case, we find that like Wilson's case, there was in it a paper, executed by the governor, which was a *provisional grant.* Further evidence was offered to show that this grant was followed by a complete grant, but it had been so altered as to give rise to some question as to its integrity. While the court inclines to think the alteration in the papers was made under circumstances which do not invalidate them, yet they show that whether valid or not, upon the case as made without the final grant, the claim would be confirmed. Unless such was the meaning of the court in its opinion in De Haro's case, there is no principle in common between it and Wilson's case; which, as already stated, the court say, in 1 Black, 270," comes within the principle of the case of The U. S. vs. De Haro's heirs, 22 How., 293.

The expediente of the title of Jacob P. Leese for the Visitation ranch within the pueblo limits of San Francisco shows, first, a petition to the governor for a grant of the land for raising cattle and horses, dated 14th November, 1839; next, a reference of this petition to the Justice of the Peace of San Francisco, who, on the 17th November, reports, "that the petitioner possesses the legal qualifications required, that the land he solicits may be granted to him by virtue of his having formerly received permission from the government of the department to *occupy it provisionally.*"

On the 31st July, 1841, the title paper is issued to Leese, reciting, "In view of the petition, * the *report of the Justice of the Peace of San Francisco,* &c.," the grant is made. (See Dwinelle's Argument, Add., page 67, No. 47, for this document.) Here, then, the provisional occupancy is stated as one of the grounds of the final grant.

In the following cases the titles which were perfected by the Mexican or United States governors, are shown to have begun with provisional concessions or occupation:

U. S. vs. Vallejo, 1 Black, 283, (in which case there was no final grant, excepting as evidenced by Jimeno's Index.)

Rodrigues vs. U. S., 1 Wall., 582. Supra.

United States vs. Alviso, 23 How., 318. Supra.

United States vs. Bidwell. Supra.

United States vs. Workman, 1 Wall., 761, the court say that lands could not be granted "which were in lawful possession and occupancy of persons claiming provisional title."

U. S. vs. Halleck, 1 Wall., 440, speaks of the provisional concession as declaring the party to be owner in fee, and says that both it and the formal title were issued on same day, 8th October, 1844. The opinion, page 452, says the "provisional concession, preceding the formal title, gives a similar description."

U. S. vs. Moreno, 1 Wall., 400, there was a provisional license, followed by a full grant, and confirmation.

U. S. vs. Armijo, December term, 1866, Sup. Ct. U. S.

U. S. vs. Soto, 1 Hoff., 177.

In the following cases this court have spoken of the effect of provisional occupation:

U. S. vs. Garcia, 22 How., 274.

U. S. vs. Bennitz, 23 How., 255.

U. S. vs. Bassett, 21 How., 412.

U. S. vs. Rose, 23 How., 262.

U. S. vs. Osio, 23 How., 273, 279.

U. S. vs. Garcia, 22 How., 274, is cited by the district court as authority against a confirmation on a provisional title, and as in point for sustaining that court in holding De Haro's title papers insufficient. But in Garcia's case there was no entry of a grant on Jimeno's Index, nor on the Toma de Razon, which is strongest of all reasons for rejecting it; nor was there any appearance of an ex-

pediente, or any paper of any kind, affecting the land in the archives. Thus the claim in the case rested alone upon a paper produced from private custody, and it was a mere "passport" (as this court designates it, page 281,) to go through the country and "search for land." The request to do this was granted, and permission given to occupy the land "while the usual procedure was being prosecuted." This is the whole case. As bald as it is Mr. Justice Hoffman relies upon it to sustain his ruling. In addition to the absence of every feature that constitutes an inchoate grant, it is to be recollected that no right can accrue by any mere float to land issued by the governor, because, until the parcel of land sought for is designated, he cannot make the universal preliminary inquiry as to whether a previous grant of the same land to another person has been made; if so, it is not to be granted again, until on being denounced by another person who seeks to obtain it; as subject to grant; the inquisition is made by the governor, to determine the facts on which it can be "reunited to the domain."

In U. S. vs. Bennitz, 23 How., 255, in which the Sutter general title was presented, there was in aid of it given in evidence a paper in reply to the petition, as follows, page 256, July 26, 1844: "Jimeno's recommendation that it should wait until the governor can visit the Sacramento. To which the governor says 'let him occupy it provisionally until I go up to conclude it.' These documents were proved by a witness who swore that he believed the signature of Micheltorena, Jimeno, and Sutter to be genuine."

These papers were not found in the archives, and the court, on page 262, says the case is decided on the cases of Nye and Bassett, 21 How., 408, 412, where the Sutter general title was discussed. "This claim is in all respects similar, and for the reasons assigned in those cases is invalid."

In the case of U. S. vs. Bassett, 21 How., 412, cited as

above, the court gives the history of the overthrow of Micheltorena, saying, p. 413: "During the fall of 1844, a formidable insurrection against Micheltorena, was maintained by some of the leaders then in California, and in December, of that year, he was beleagured in Monterey. One of the principal grounds of complaint against him was an imputed disposition to strengthen the settlement of Sutter, on the Sacramento, by improvident grants to foreign emigrants." This conflict, the court in this, and other cases, shows to have continued until 1845, when, "after a bloodless battle, Micheltorena consented to abdicate his office in a short time, and to leave the country;" and, the court remarking, that as none of these title-papers were entered in the records, it thus appeared why the government of Mexico had not so placed them in the archives; that is, they were issued by Micheltorena, while engaged in preparations for war against the government. Thus, on page 414: "None of these documents are to be found in the public archives. No trace of the evidence on which these titles depend, is exhibited in any of the records of that state. The consideration on which they were made have no reference to the colonization laws of Mexico. The promises of Micheltorena to Sutter, and through Sutter to the foreign volunteers, did not confer a title to any part of the public domain, nor perfect any incipient pretension into a vested interest. The parties looked to the contingency of a suppression of a revolt, * the maintenance of the power of the governor, for the fulfillment of these promises. In this they were disappointed." These title-papers originated during the struggle, the end of which established the fact, that the author of them was a public enemy.

In U. S. vs. Rose, 23 How., 262, the Sutter general title again was produced, and the court say, p. 267: "In the cases of Nye and Bassett, (21 How., 412, 408,) it was proved that the claimants were soldiers in the war of Micheltorena, and had taken possession of the land

within their claim, under a temporary license from the governor. There is no evidence of the kind in this case."

U. S. vs. Osio, 23 How., 272. On page 277, the court answer an argument used in support of a claim based on "a right or license to occupy the island," by saying that the party did not avail himself of such license, nor enter upon the land under it, and refused to confirm the claim there, because the governor had no authority to grant islands.

The approval of titles by the departmental assembly has been dispensed with, as appears by numerous decisions. See—

Fremont's case, 17 How., 563.

U. S. vs. Galbraith, 2 Black, 403.

U. S. vs. Johnson, 1 Wall., 326.

U. S. vs. Peralta, 19 How., 343, 348.

And yet, the importance of this part of the written evidence of title is stated in the following language of the court, by Mr. Justice Nelson, in U. S. vs. Galbraith, 2 Black, 394, 403: "Of the documentary evidence of title, under the Mexican laws, the approval of the departmental assembly was next in importance to the grant itself."

IV. The principle of equity made a rule of decision by the act of 1851, and which lies at the foundation of these cases, consists in the thorough and entire adoption of the spirit of the former government, in relation to its land policy. Its lands were given away, and to appreciate the desire that the government had for the acceptance of these lands by its people on the terms it offered, we need only look at the manner in which the gifts were made, and the quantity of land embraced in the grants. The only consideration asked by the government, was the application of the land to a purpose

useful to the colony. The Spanish and Mexican regulations regarded the tillage of land, and taming and breeding of cattle, as those uses that were to be cherished and encouraged. The importance of cattle is shown by the following extracts from the public regulations, as found in 2 White's Recop., p. 48, sec. 74, where it says the grant is to be made for "the working the said land *and the breeding of stock.*"

P. 50, sec. 76, says, the person who shall accept grants shall "*stock with cattle those which are destined for pasture.*"

P. 51, sec. 82, is a special regulation as to "the grazing estate for horned cattle, mares, swine, and others, large and small," directing that lands for such purpose shall not be granted so as to injure lands for cultivation.

P. 52, sec. 84, provides for distribution of lands for specified purposes, and amongst others to "raise cattle."

On p. 62, No. 4, is shown the desire of the crown that colonists should obtain their title-papers, because, in consequence of their not doing so, "much land is left uncultivated which might support the provinces in which they are, by being cultivated *and grazing* cattle; and it is another result, that persons occupy lands illegally, through defects of title, without properly cultivating them, for fear of being denounced and prosecuted for it, and my royal treasury also suffers, both in the amount of sales of these lands and in the consequent neglect of agriculture, *and tending cattle.*"

At the time California was acquired by the United States, these Mexican laws, customs, interests, and habits, were in full force, and under the law of nations, this government is bound to respect and apply with undiminished force, the consideration which would support a Mexican land title.

The labor and attention of these petitioners in the raising of cattle on this land, was such a benefit to the government as to amount to a consideration for a grant of it. It had so declared in its published orders, nor can

this government ignore that such consideration passed for the grant on the 1st of May, 1844. If the petitioners had not complied with it, the land could have been reunited to the domain; and the question of consideration and possession is purely a Mexican question.

It is in this view that equitable jurisdiction arises, and this court is called upon to decide what should be done in specific performance of the terms of the treaty; and to determine this as a Mexican question the mind must confine itself exclusively to time prior to the 7th of July, 1846.

The policy of all states is to reduce the great body of vacant lands to private and individual ownership—it is regarded as of more advantage to the state, as well as the individual, that the lands should be used for agriculture or raising of stock, rather than remain vacant. The policy of the United States has conferred upon the actual settler the title, without petition even for it, upon his entering upon the land and making actual use thereof; but this government has required payment of a small consideration in money for the land, and limited the quantity which a settler has thus the right to appropriate.

How much stronger the desire of the Mexican government was to have its lands settled is shown by the more liberal terms it offered to settlers. It made laws, which were obligatory upon its governors, to donate the lands without any price, and in large tracts. These laws were, in effect, the decree of the government, so that whenever a petition was presented for a grant, upon the governor's ascertaining that the party was one to whom he could grant, and that the land was vacant, and there was no title to it in another person, he was, under the force of a law that he could not resist, compelled to accede to the petition and issue the proper title papers.

He could not accede if the land was beyond his power to grant, which it would have been if a prior grant had been given, or even if it was not vacant, as its mere occu-

pancy implied a title in favor of the possessor. The governor's permission to occupy in consequence of the petition is, therefore, of itself, evidence that the land was vacant, and had not been previously granted by the government, although the report of the officers to whom the case was referred, in the case at bar, showed the same facts. There was a caution, however, to the governor, in the report of Secretary Jimeno, as to whether the land should be so granted to De Haro as to deprive the contingent pueblo of Dolores of it, should it thereafter be proved that it would be proper that such pueblo should have it.

On this caution the governor had still to determine his duty, which was simply to obey the law; and his decree was, that the law awarded the land to the petitioners. This is the principle applied in U. S. vs. Castillero, 23 How., 464. There an order had been issued by the President of Mexico to Governor Alvarado authorizing him, in concurrence with the departmental assembly, to grant islands—which power was not included under the general colonization laws. On the same day a special dispatch was issued authorizing the governor to assign to Castillero one of these islands, *which he might select*, before granting the islands under the other dispatch of the same day.

This special dispatch did not require the concurrence of the assembly. The grant was made, and the court in settling the question whether made by competent authority, said, by Mr. Justice Clifford, page 469: "Emanating, as the dispatch did, from the supreme power of the nation, *it operated of itself to adjudicate the title to the claimant*, leaving no discretion to be exercised by the authorities of the department. Neither the governor nor the assembly, nor both combined, could withhold the grant, *after a proper selection*, without disobeying the express command of the supreme government. Nothing, therefore, remained to be done after the selection by the claimant

but to issue the title papers, and that was the proper duty of the governor, or the executive organ of the department."

The fact of the selection of the land being shown by the records, it will be held that the law passes the title, and it is apprehended that this principle was evoked in this case to make good any supposed defects that existed in the title papers, as the greater part of the opinion is a discussion of such supposed defects, and it was a matter of serious discussion whether or not the expediente was complete.

Any difficulties about this, the court resolved on finding the title entered in Jimeno's Index, saying, page 467: "At the argument we were very properly furnished by the counsel with a copy of an index of concessions, prepared by the secretary of the department. That index covers the period from the 10th May, 1833, to the 24th December, 1844. It contains a list of 443 concessions, and among the number is the one set up by the claimant in this case."

And it is the entry of the incomplete expediente on Jimeno's Index that settles all questions as to the completeness of the title as to form in the mind of the court.

If now we are to take Castillero's case as a guide, and hold that the governor acted under the law in his reply to the De Haro petition, and did what he did in execution of what the law made his duty, we have the proper construction of these acts of his.

The selection of the land here, as in the case of Castillero of his island, presented the facts; and here we do not have to presume that the governor acted, for we have evidence of his action; but we have merely to refer his action to the law, and hold that it was intended by him to be in accordance therewith. That he had the law in contemplation when the petition was presented, is shown by his referring it to the secretary; and that he regarded his action as a grant and disposition of the land, is shown

by the form of the paper that he gave to the parties, and his causing the same to be enrolled in the record of grants.

The parties state, in their petition, that they have cattle which they desire to place upon the land to tame them, thus: "That, inasmuch as we have to remove the share of cattle appertaining to our deceased mother, and as we have in view to tame them, we entreat your excellency to grant to us a small parcel of land, &c., * and as said parcel of land can be enclosed, we intend to place on it the tamed cattle, because of the small extent of the location occupied at present by the cattle of our father."

The grant issued by the governor says: "They shall not obstruct the paths, roads, and servitudes, *using it for culture and cattle* they intend to introduce on it, but within a year, at the most, it must be occupied."

Here, then, is a direct consent to the occupation of the land for the use requested, which is one of the objects of especial advantage to the supreme government. Catching wild cattle, herding, and taming them, was one of the first objects to be cherished by that remote settlement. Is it to be doubted that these facts raise an equity in favor of these parties, as that term is understood with reference to such grants. Chief Justice Marshall, for the court, says, in 9 Pet., 117, 133, Delassus vs. U. S.: "No principle is better settled in this country than that an *inchoate* title to lands, is property." Now, is this occupancy of this land, and especially when proven by a writing so solemn as to be enrolled, evidence of inchoate title?

That it is, is distinctly declared by this court, in U. S. vs. Arredendo, 6 Pet., 691, 727, where the court, speaking of the U. S., say: "They have submitted to the principle which prevails as to all public grants of land, or acts of public officers in issuing warrants, orders of survey, *permissions* to cultivate or improve, *as evidence of inceptive and nascent titles*, which is, that the public acts of

public officers, purporting to be exercised in a public capacity, shall not be presumed to be an usurped, but a legitimate authority. * * If it was not a legal presumption that public and responsible officers claiming and exercising the right of disposing of the public domain, did it by order and consent of the government, * the confusion and uncertainty of titles and possessions would be infinite, even in this country; especially in the states whose tenures to land depend upon every description of *inceptive, vague, and inchoate equities*, rising in the grade of evidence, by various intermediate acts, to a full and legal confirmation by patent."

Now, it is to be observed, here, that the court treat the issuing of these peculiar papers as "evidence of inceptive and nascent titles." The very officers who gave them could have given a paper much more effective as a title paper? * Was the argument made, therefore, by the government, that the paper was not to he construed as a grant, because it was not couched in accurate and proper words to that effect? The numerous decisions of this court show, that the entry upon the land, made with the request to become owner of it, when attended by the consent of the government, meant getting into a current which always ran one way, and was subject to no deflections.

And then the court was actuated by the spirit that the government was dealing with these people of Louisiana as its own citizens, and that it adopted them and their titles, and after the treaty there was no opposition to them as foreigners, but on the contrary, friendship, protection, and encouragement; and the former Spanish documents became United States documents, just as now these Mexican title-papers are to be treated in as friendly and indulgent a spirit as if they had always been sustained by the authority of the United States.

Here, then, we have recognized and carried into effect, as an element of title, by this court in its early decisions, the

great principle, that permission to occupy the land, acted upon by the petitioner, constitutes, by the custom of the colonies, a meritorious ground for title; and that this meritorious ground of title remained intact by the change of government. Written evidence of the intention to make a final grant was not required, for the proof of the intention of the government consisted in the permission given to the petitioner to enter upon the land. If the United States had not have construed the mere possession of the land as evidence of a nascent claim or title, and placed itself in the attitude of willingness to further grant the title, it would have forfeited all the lands in the newly acquired territories, and would have depopulated them. This government could have imposed such rules of evidence of inchoate titles, as to have become the owner of most of the lands held by the people; but this court, under the earlier treaties, adopted the opposite spirit, and regarded possession as the highest evidence of title, that could be rebutted only by direct proof of abandonment of the land, or proceedings by the former government, to reunite the land to the public domain.

It is here to be considered, that these rules approved by the earlier decisions of this court, have not merely that effect which is commonly given by this court to its previous decisions; but, that by the terms of the act of 1851, they are to be held as constituting a statutory code of title, so far as the principles established by those decisions are applicable to Mexico. The laws of Louisiana were derived from Spain, and nearly all its grants were from the Spanish governors, so that the Mexican and Louisiana systems are the same, excepting so far as changed by local laws directly enacted, and customs proven to be opposed. The controlling feature, of possession given before the titles were completed, is common to both states; and, therefore, the presumption is common to both, that possession of land is not only consistent with the intention of the government to grant title;

but as it could not be held without the permission of the government, it is strong presumptive evidence of inchoate and nascent title; it is evidence not only of claim of title, but claim originating by consent of the government.

The 11th section of the act of 1851 says, that the courts, in deciding on the validity of any claim brought before them, shall be governed by the treaty, * * * the principles of equity, "and the decision of the Supreme Court of the United States, so far as they are applicable."

The force of this law is aptly stated in U. S. vs. Arredondo, 6 Pet., 691, 713, thus: "Where Congress have, by confirming the reports of commissioners or other tribunals, *sanctioned the rules and principles* on which they were founded, it is a legislative affirmation of the construction, put by these tribunals, on the laws conferring the authority, and prescribing the rules by which it should be exercised." And the court say, in Smith vs. U. S., 10 Pet., 326, 330: "They (the U. S.) bound themselves to carry into specific execution by patent, every grant, concession, warrant, or order of survey which * * had created any legal or equitable right of property," and (on same page) "every species of title inchoate or perfect, embracing those rights which lie in contract, those which are executory, as well as those which are executed," were protected by the treaty. The court was not here speaking of "*executory*" rights, or those evidenced by written contracts of the Spanish government, given specifically, but of those general promises which were evidenced by the laws and regulations in favor of persons who were willing to go upon the lands of the crown. "The new government takes the place of that which has passed away," id., 330.

Marshall, Ch. J., says, for the court, in Chouteau vs. U. S., 9 Pet., 147, 154, "if we may trust the best information, neither the governor nor intendant general has ever

refused to perfect an incomplete title." These principles are fully set out in many decisions on the Louisiana and Florida treaties, and if they are to be adopted herein as rules made applicable by the act of 1851, they indicate a decree in this case that will perfect, and not forfeit, the title now presented.

In United States vs. Sutherland, 19 How., 363, 364, the court say: "In construing grants of land in California, made under the Mexican authorities, we must take into view the state of the country and the policy of the government. * * * It was the interest and policy of the government to make liberal grants of these lands to those who would engage to * settle upon them.

"Where land is plenty, * labor scarce, *pasturage and raising cattle* promised the greatest reward with the least labor. * * * * This court have no discretion to enlarge or curtail such grants to *suit our own sense of property.*"

In U. S. vs. Reading, 18 How., 1, 8, the court, by Mr. Justice Wayne, say: "The Mexican republic, from the time of its emancipation from Spain, always dealt most liberally with foreigners in its *anxiety* to colonize its vacant lands;" and much of the opinion in this case is an extended argument to show, that every favorable principle should be applied to uphold, rather than forfeit, these claims.

In 1 Wall., 358, U. S. vs. Auguisola, the court say, the "United States have not desired the tribunals to conduct their investigations, as if the rights of the inhabitants to the property which they claim, depended upon the nicest observance of every legal formality. They have desired to act as a great nation, not seeking in extending their authority over the ceded country to enforce forfeitures, but to afford protection and security, to all *just rights which could have been claimed* from the government they represented."

Rodrigues vs. U. S., 1 Wall., 587, by Mr. Justice Mil-

ler, says: "That government (Mexico) attached no value to the land, and granted it, in what to us appears, magnificent quantities. Leagues instead of acres were their units of measurement, and *when an application was made to the government* for a grant, the only question was whether the locality asked for was vacant, and was public property."

U. S. vs. Moreno, 1 Wall., 404, says, by Mr. Justice Swayne: "A right of *any validity* before the cession was equally valid afterwards, and while it is the duty of the court, in the cases which may come before it, to guard carefully against claims originating in fraud, it is *equally their duty to see* that no rightful claim is rejected." * * * The act of 1851 "ought to be administered in a large and liberal spirit."

Acting in the spirit of the former government, with reference to the effect of the title papers it issued, and believing that the individuals obtained them as evidence of their right to occupy the land as their individual property, the following decisions have been made by the courts:

In U. S. vs. Soto, 1 Hoff., Cal. Rep., 177, there was a *provisional grant* and an occupation of the land with cattle. The court say, page 180, by Hoffman, J., "the expediente contains the order of concession upon which a grant would issue as of course," and the claim was confirmed.

In another case of same name, U. S. vs. Soto, 1 Hoff. R., 182, Soto had made a previous petition for land which was acceded to, and now again petitioned for the *sobrante* or surplus. The only answer to this second petition is thus stated by the court, page 183: "the governor acceded to the petition in the following words:

"In conformity with the foregoing, Micheltorena."

"It is objected that this was not a valid grant of the surplus," and the court say, whatever the form be here, "at all events there can be no doubt in this case, that the governor intended to accede to the petition, and the land

having, under this grant, or promise to grant, been long occupied and enjoyed, and on all hands recognized as belonging to the grantee, the latter has, in any view, an *equitable* right which the United States are bound to respect," and the claim was confirmed.

In United States vs. Rodrigues, 1 Hoff. Rep., 170, the expediente or original title delivered to the party was lost, and the court confirmed the claim because the evidence of it was found in the archives, saying, "In all these cases the evidence from the archives is, perhaps, even more satisfactory than that afforded by the production of an alleged original title." And it further appeared that the possession had been first taken in this case under a *provisional grant.*

U. S. vs. Enright, 1 Hoff. R., 239.

"The documentary evidence of title exhibited by the claimant in this case is as follows: A petition to the governor, dated December 20, 1844; a marginal decree or order for information by the governor, and a favorable report by the secretary, Manuel Jimeno. On receiving this report, the governor makes the following decree: January 6th, 1845. Granted as asked for and reported by the most reverend father Minister. Micheltorena.

The claimant has also produced a record of judicial possession, which seems to have been formally given him, by the constitutional judge of First Instance of the pueblo of San Jose Guadalupe, on the 18th of February, 1846.

It is objected, that these documents are insufficient to vest any title, either legal or equitable, in the claimant. It must be admitted that the concession in this case is not the final *documents* or title, which by the eighth article of regulations, the governor was authorized to issue when the definitive concession was made. In Arguello vs. The United States, (18 How., 543,) the supreme court, after alluding to the "informes" usually required, say: By the fourth section, the governor, being thus informed,

may accede or not to the petition. This was done in two ways—sometimes he expressed his consent by merely writing the word *concedo* at the bottom of the expediente; at other times it was expressed with more formality, as in the present case. It is intended merely to show that the governor has acceded to the request of the applicant, and as an order for a patent or definitive title in due form to be drawn out for execution. It is not itself such a document as is required by the eighth section, which directs that, definitive grant asked for being made, a document signed by the governor shall be given to serve as a title to the parties interested.

But this concession, although not the final title which issued under the eighth article, is nevertheless a grant. The words of the grant are positive and plain, and though shorter and more informal than the usual decree of concession, commencing with the words vista la peticion, it is in all respects as effectual to constitute an inchoate or imperfect title.

It has always been held by this court, that, according to the provisions of the regulations, the formal or definitive title contemplated by the eighth article could not issue, until after the concession of the governor had been approved by the departmental assembly; and that though the practice of issuing that document in advance of such approval, and in terms subject to it, obtained to a considerable extent, yet such a document, where no approval had been obtained, constituted merely an inceptive or equitable title.

Whether this latter view be correct or not, no doubt can be entertained, that the first decree of concession, whether made in the more formal manner usually observed, or, as in the present case, by the short declaration that the land was granted as asked for, afforded the basis for the departmental assembly, whose approbation was necessary to perfect or give definitive validity to the title. When, therefore, it appears that this inceptive title has

been delivered to the party shortly after its date, and has been regarded by the judicial officer as furnishing the requisite authority to enable him to put the grantee in possession, it should be treated as vesting in the grantee the inchoate or equitable title, which, when followed by occupation and cultivation, ought to be respected.

There is no reason to suppose, that when the governor, after having obtained the requisite information, had acceded to the petition, made a decree of concession, and ordered the patent to issue, he would have declined to sign the title in form. So far as his action was concerned, he was *functus officio*, except the merely formal act of signing the final *documents;* and it may well be doubted whether, if this concession had been approved by the assembly, he would have been at liberty to withhold from the party the formal evidence of title which the eighth article directs him to issue in such cases.

"It is not explained why the governor did not in this case pursue the more usual practice of issuing the final title, subject to the approval of the assembly. He may, perhaps, in strict conformity with the regulations, have withheld it until the approval was obtained; or he may, according to the loose and informal practice of the country, have considered that for so small a piece of land the grant endorsed upon the petition was sufficient to secure the rights of the applicant. The concession was, at all events, delivered to the grantee, for we find it in his hands very soon after its date, and by virtue of it the possession was formally delivered to him." These are the extended views of Mr. J. Hoffman, in explanation, as he terms it, "of the loose, and informal practice of the country."

(See also Cornwall vs. Culver, 16 Cal., 423; U. S. vs. Sutter, 21 How., 171.)

U. S. vs. Yerba, 1 Wall., 423, says: "The absence from the grant of conditions requiring cultivation and inhabit-

ancy, and the construction of a house within a year, does not affect the validity of the grant."

Fuentes vs. U. S., 22 How., 460, says: "It is not, however, to be supposed that no title in California can be valid which has not all the preliminary requirements of the act of the Mexican Congress of 1824 and of the regulations of 1828."

In the Fossat case, 2 Wall., 649, 716, the court say: "It is true in the second condition of the grant it is said the judge who shall give possession of the land shall have it measured in conformity to law. * * But this is a *formal condition*, to be found for abundant caution in every Mexican grant."

In U. S. vs. Arredendo, 6 Pet., 711, Mr. Justice Baldwin says, for the court, in speaking of the tests by which the title is to be decided, says, on p. 718: "The rules vary according to the kind of title set up, distinctions have been made in all the laws between perfect or complete grants, fully executed, or inchoate incomplete ones, where a right had been, *in its inception*, under or by color of local law or authority, but required some act of the government to be done to complete it." And the court hold that the government, by consenting to be sued, submitted to having the title made complete, no matter what stage it was in, nor how incomplete at the change of government. Thus, p. 721: "Whether, then, the present claim is by patent, grant, concession, warrant, or order of survey, or *any other act* which might have been perfected into a complete title by laws, usages, and customs of Spain, is immaterial as to our power to hear and determine."

And on p. 733 the court say: "We conclude this review of the acts of Congress and decisions of this court with speaking their words in Rutherford vs. Green, viz: Whatever the legislative power may be, its acts ought never to be so construed as to subvert the rights of property, unless its intention to do so shall be expressed in such terms as to admit of no doubt, and to show a clear

design to effect the object. No *general terms intended for property* to which they may be fairly applicable and not particularly applied by the legislature—no silent, implied, and constructive repeals—ought ever to be understood so as to divest a vested right."

Another point in this case was; whether the condition in the grant to Arredendo to "establish on the lands two hundred Spanish families" was not so essentially the consideration of it, and one so peculiarly affecting Spanish interests, that the failure to comply with it terminated the previously granted interest? The court say, (p. 745,) that whatever might be the rule at law, a court of equity will not adjudge a forfeiture for such reason. "The condition of settling two hundred families on the land has not been complied with, in fact." * * * "It is an acknowledged rule of law that if a grant is made on a condition subsequent, and its performance becomes impossible by the act of the grantor, the grant becomes single." And the court say they will not hold, that after Spain had ceded the country, the compliance of the condition was necessary. There would be no equity in so holding. P. 746: "If the case required it, we might feel ourselves at all events justified, if not compelled, to declare that the performance of this condition had become impossible by the act of the grantors, the transfer of the territory, the change of government, manners, habits, customs, laws, and all the social and political relations of society and of life. The United States have not submitted this case to her highest court of equity on such grounds as these. We are not either authorized or required by the law, which has devolved upon us the final consideration of this case, to be governed by such rules, or governed by such principles, in deciding on the validity of the claimant's title."

Another objection urged against the confirmation was that the lands were not subject to be granted, because devoted to another purpose. Thus, on p. 747: "It is

objected that the lands in question are *within the Indian boundary*, and *not subject to be granted.* Of the fact of such location there seems to be no doubt." But the court refuse to allow this reason to come in on the inquiry before them, of the effect of the grant to Arredendo, saying: "The title of the Indians to these lands is not a matter before us. The grant is made *subject to their rights, if they return to resume them*, and their abandonment has been ascertained by a proceeding which the intendant of the grant calls a sentence pronounced by him. * * * The intendant pronounced his sentence, and declared the granted lands to be a part of the royal domain, and open to a grant, reserving the Indian right of occupancy whenever it should be resumed." * * * p. 748: "There is another answer to this objection which deserves notice. Grants of land within the Indian boundary are not excepted in the laws referring them to judicial decision. Congress made what exceptions they thought proper. As the law has not done it, we do not feel authorized to make an exception of this."

Chouteau vs. Eckhart, 2 How., 344, very pointedly decides the character of claims which were held to be protected by the treaty with Louisiana, and will aid much in determining the effect of the title here presented; for a *provisional* document was there the foundation of the title claim. First let it be noted that the case (p. 375) approves the decisions of the Supreme Court of Missouri as to the character of the claims confirmed by the act of 13th June, 1812; (2. S. L., 748,) the language of which is nearly identical with the act of 1851; as stated in the cases of Byrd vs. Montgomery, 6 Mo. R., 514, and Mackay vs. Dillon, 7 Mo., 10, 13. The language of the court in this last case is: "That the phrase *rights, titles, and claims* implies something more than grants or concessions, and will embrace such claims as rest on mere inhabitation, cultiva-

tion, and the usages of the country." And on p. 14: "A mere claim, unsupported by any shadow or pretence of right, is clearly not such a claim as any act of Congress could confirm. The force of the term confirmation itself implies some sort of a title in previous existence, whilst the word *claim* could not be justly interpreted in so broad a sense as this, yet neither is it to be so restricted as to exclude everything which the previous words *rights and titles* might embrace.

Claims are doubtless mentioned in order that the act might be sufficiently large to embrace every species of proprietary interest set up against the government, whether founded on concessions, grants, uses, or any other inchoate title, by which, under the laws and customs of the Spanish government, property could be severed from the king's domain and equitable titles created." (It has not been overlooked that this case of Mackay vs. Dillon, on writ of error, was reversed, in 4 How., 421, which was on the mere ground of error in receiving as conclusive evidence of boundaries, the survey on which the claim was made.)

To return to Chouteau vs. Eckhart. It was there objected that the St. Charles common tract was not confirmed, because the *title paper given in evidence* showed *affirmatively* that it was not intended to be a grant of land. Thus, on p. 355, the counsel make the point: "The court will please to observe that no specific grant has been given in evidence. * * * The documents which have been given in evidence by the defendant will be seen not only not to constitute a grant of commons, but specifically to refute the presumption of, and to negative a grant." And so important was this point considered, that again in the argument, it was presented, on p. 361, viz: "Again, in the response of the lieutenant governor, there is no grant at all. There is only a declaration that the land asked for shall remain royal domain, * * * and, at the utmost,

assents to the use of it until further orders." The document thus pressed upon the court, as furnishing evidence of an intention not to make a grant or final disposition of the lands, is on p. 349, and was issued by the governor. It is in reply to an application of the inhabitants for an enlargement of their commons. "If the commons is not sufficient for their cultivation, we do permit them *provisionally* to enlarge the same according to their wishes, *without insuring to them the right* of property, which they are to apply for as above mentioned; and the *provisional* lines of the said augmentation shall be drawn by Captain A. Soulard, Surveyor of Upper Louisiana, who is the only person authorized to survey under our orders." The court held that the claim was confirmed under language as follows: "The rights, titles, and claims."—(See 2 Stat. L., 748, act of 13th June, 1812.) This same construction of the act is approved in Guitard vs. Stoddard, 16 How., 494.

In Leese vs. Clark, 20 Cal., 387, 421, by Mr. Ch. J. Field, the court say:

"The acquisition of California by the United States, did not affect the rights of the inhabitants to their property. They retained all such rights, and were entitled by the law of nations to protection in them to *the same extent* as under the former government. (U. S. vs. Perchman, 7 Pet., 86.) * * * And the term property as applied to lands, embraces all titles, legal or equitable, perfect or imperfect. It comprehends, said the Supreme Court, in Soulard vs. United States, every species of title, inchoate or complete. It is *supposed to embrace* those rights which are executory, as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. The new government takes the place of that which has passed away, (4 Pet., 511.) It is therefore of no moment whether the title which passed to the plaintiff by the Mexican government be regarded as perfect or imperfect; it constituted

property and, as such, the obligation to protect it was cast upon the United States. * * * Legal titles, such as were perfect under the former government, did not need *any action* of the new government for their protection, but their *presentation* was necessary to enable the new government to ascertain the extent of the property it had acquired by the cession of the country. *Equitable* titles required *further action of the granting power* for their protection, and their presentation was necessary to enable the new government to discharge its political obligations in this respect. * * The new government succeeded to the obligations of the former government with respect to the property claimed."

The location of the De Haro tract within the pueblo limits of San Francisco is the only consideration that can limit the existence of the grant. But Congress has not determined that grants within that area are not to be presented for confirmation. Congress has not undertaken to decide any question of Mexican law, as to the effect upon a private title the situation of the land may have. Any conflicts of this character depend upon the laws of the former government. But if a confirmation is denied, because there is a better adverse title to the land in a third person, the inquiry here becomes a very different one, from that of a mere question whether or not, any right was given to the claimant as against the United States.

This is a different question from that which may be raised on the face of the grant. That is a limitation, either on the duration of the title, or on the extent of the land granted; and which limitation is operative only on the admeasurement of the ejidos of the establishment named. If that is a contingency which has become impossible by such a change of government as spoken of in the Arredendo case, and if the rule applied in that case be applied here, then the title, so far as it was defeasible, has ceased to be so now. But even if defeasi-

ble, this court will not hold it to have been defeated, in the absence of proof bearing upon the subject-matter of the condition. Questions of fact and of law might arise upon that inquiry, which would present the case in a different light, on that branch of it, from that urged here.

There are several decisions on Florida cases in which the question was, whether the Spanish grant conveyed the right to the soil, or only a license of temporary use not susceptible of confirmation, and in which the liberal construction was adopted. See—

U. S. vs. Seton, 10 Pet., 309, for five miles square.

U. S. vs. Richard, 8 Pet., 470, for 16,000 acres of land.

U. S. vs. Sibbald, 10 Pet., 313, for 16,000 acres.

In Chouteau vs. U. S., 9 Pet., 147, an objection made to the confirmation of the concession, which was for one league square, was that it was not affirmatively shown to the court, that the grantee had the number of tame cattle required by the Spanish regulations, for so large a grant. The court, after expressing some doubt as to whether such a regulation applied to the case, said, page 153–4, "We think also, in the spirit of the decisions which have heretofore been made by this court, and of the acts of confirmation passed by Congress, the fact that the applicant possessed the requisite amount of property to entitle him to the land he solicited, was submitted to the officer who decided on the application; and that he is not bound to prove it to the court, which passes on the validity of the grant. * * It is remarkable, if we may trust the best information we have on the subject; neither the governor nor intendant general, has ever refused to perfect an incomplete title granted by a deputy governor or sub-delegate. We cannot allow this objection to prevail." And the court reversed the decree of the court below, and confirmed the incomplete title.

In these two cases last cited, the court shows that it will not inquire into the facts bearing on these conditions,

which might, under an adverse construction, be held an essential defect in the inchoate title; and is greatly influenced by the consideration, that it appears that the former government did not avail itself of such conditions, to oust settlers from their lands.

PERMISSION TO SETTLE.

Under the Spanish system, "permission to settle" upon the land, carried an interest in the land, which was the very common beginning of a complete title, and was considered as the inception of an interest which continued, until actually rescinded and terminated, by decree of the government, or positive proof of abandonment was made.

In 3 Amer. State Papers, Pub. Lands, p. 6, we find amongst the various classes of Spanish titles, as follows:

"A register of claims founded on orders of survey, *permissions to settle*, or other written evidence of claims, derived from either the French, British, or Spanish authorities; which claims ought, in the opinion of the commissioner, to be confirmed. This register contains 320 claims."

And, on page 8, begins the tabular statement of such claims, the larger part of which are marked simply thus: "Spanish permit" or "Spanish order of settlement," showing that these titles, beginning with the mere written permission to enter into possession, are peculiarly a Spanish feature. On p. 11, at the close of this table of titles, is the certificate of Mr. Crawford, commissioner, who says: "Where a tract of land has been inhabited and cultivated for three years, with the *permission of the proper Spanish* officers, I have supposed that the claim ought to be confirmed, though the land has not been regularly inhabited and cultivated afterwards; if it has not been subsequently granted by the Spanish government."

On page 21 will be found the petition on which such orders are issued, in which the party recites that he has

found a designated tract of land which is vacant, "and as the said tract of land is not, nor has been granted, being desirous of establishing a cow pen, * * solicits you to grant him permission to settle himself as above mentioned; and when *what may be necessary has been completed;* to transmit whatever has been effected to the governor general, to obtain the requisite title in form."

On page 6 this report begins—it is dated 2d January, 1816, and is of land claims east and west of Pearl river.

By act of 3d March, 1819, chap. 223, the above claims are confirmed, by language which recognizes such permissions to settle, as valid appropriations of the land, as against the U. S.: thus, sec. 2: "That all claims reported as aforesaid, and contained in the several reports of the said commissioners; founded on any order of survey, requette, *permission to settle*, or *any written evidence of claim* derived from the Spanish authorities; which ought, in the opinion of the commissioners, to be confirmed * * shall be confirmed in the same manner as if the title had been completed." (3 Stat., 528.)

And by act of 28th May, 1830, sec. 1, 4 Stat., 408, on a later report, the same rule is adopted by Congress; confirming titles founded on "any order of survey, requette, *permission to settle*, or other written evidence of claim derived from the Spanish authorities."

On p. 432, 3 Amer. State Papers, is the report of the commissioner of the general land office, containing the regulations of Morales, published in 1799, for the granting of lands; the 18th article recites that many persons who petitioned for lands have thought themselves the true possessors of them from the time they obtained the first decree; by which the surveyor was ordered to survey them and put them in possession; and have thought it unnecessary to obtain a formal deed; and he declares, that possession under such proceedings, shall not authorize the occupant to consider himself the proprietor until a real

deed; vested with all due formalities, shall have been delivered. Yet, notwithstanding such regulation, Congress, in the law above cited, has confirmed the claimants under such incomplete titles.

On page 379 is a report to the Senate, of March 20, 1820, of a memorial by the State of Louisiana, to Congress, in regard to the old Spanish titles, asking a relaxation of the laws for confirmation thereof. They ask confirmation of title, for all lands held "by virtue of any incomplete French or Spanish grant, concession, warrant, or order of survey," * * "or by virtue of habitation, occupation, cultivation or improvement," p. 380. They say, "the standard recommended to the national legislature, for deciding on the land titles of this country, will not; the general assembly of Louisiana are persuaded, appear too loose and informal, when the spirit and practice of the ancient land system are accurately known." * * * p. 381, they add, "Grants suitable to the condition of the applicant were extended to the most humble individual in the community. Those grants were made on simple application, and were guaranteed under the simplest forms. A right was often secured by mere *occupancy*, under the *acquiescence* of the provincial functionaries."

This memorial was responded to by the liberal acts of Congress above cited, confirming Spanish titles resting alone upon a permit to occupy.

Under act of 2d March, 1805, 2 Stat., 324, and the 2d section, Congress required for confirmation of claims within the Louisiana purchase, nothing more than possession, "with the *permission of the proper Spanish officer.*" No paper constituting in form a grant; or containing words which pass title, was required or expected; because the permission to enter and occupy was consistent only with the final purpose of giving title.

That was the second law passed in relation to the confirmation of Spanish and French titles and claims, and is

the most strict in what it required. Each law that was passed relaxed the strictness of the previous laws in relation to evidence of title. Of these laws this court thus speaks, in 14 Pet., 378, Pollard vs. Kibbe: "This long series of acts, commencing with the 26th March, 1804, and terminating with the 29th April, 1816, presents an uninterrupted and uniform course of relaxation in favor of land claimants of every description."

The act of 2d March, 1805, 2 Stat., 324, provides for the confirmation of claims in Louisiana to persons "who had obtained from the French or Spanish governments any duly registered warrant or order of survey," and was in possession of the lands. This section requires no paper, showing that an estate in full property was to be conveyed to accompany the possession.

The second section confirms lands to those who held them "with *the permission* of the proper *Spanish* officer, and in conformity with the laws, usages, and customs of the *Spanish* government, made an actual settlement" thereon. This section shows that Congress recognized this *permission to settle* as a peculiar *Spanish* custom incident to the granting of lands; for it will be perceived on reading the entire section, that in two other provisions French and Spanish *grants* are both spoken of. This is made the more positive by the first section of the act of 21st April, 1806, 2 Stat., 391, which dispenses with any other proof of such "permission of the proper *Spanish* officer" than that presumptively made by actual settlement thereon for three years before the change of government.

Why thus provide for titles of Spanish origin and explicitly exclude those of French origin?

These Spanish settlers had gone into possession under a system that implied a grant or permission, and which refused a complete or definitive title, until the government was satisfied that it would not be necessary to forfeit the inchoate right, and give the land to another. If incompleteness of title, or non-removal of the conditions an-

nexed, or failure to give written or positive evidence that the former government had definitively concluded to furnish such evidence of complete title, had been treated by Congress as making a presumptive case against the settlers in the Louisiana purchase, all of the plantations, and stock and grazing lands; and nearly all of the town and village lots, would have become the property of the government.

Guitard vs. Stoddard, 16 How., 512, refers to the case of Soulard vs. Clark, 19 Mo., p. 570, with approval. In that case a Spanish conditional concession was given in evidence as a part of the title papers, of which the court speak thus, page 577: "Much was said in relation to a condition *annexed to the concession* granted to Cambas and Ortis, the non-compliance with which had caused a forfeiture of their grant, which being thereby annexed to the royal domain, the land covered by it was lawfully conceded to Soulard." The court then proceeded to show, that not only did not the inceptive, incomplete right to possess the land end by virtue of its terms on non-compliance with the condition, but that, to put an end to such right, a formal decision or finding of the authorities to that effect must be proven. Thus the court speak, on page 577: "The first American civil commandant of upper Louisiana, speaking of land titles, says 'that the same formality and solemnity were observed in the *annexation of lands to the domain* as when they were granted or conceded.' * * There is no evidence that the concession to Cambas and Ortis was ever re-annexed to the domain."

Thus the court in Missouri require affirmative proof, that under the contingency provided for in the condition, the government has repossessed itself of the land. No presumption to that effect is to be made in derogation of the defeasible estate shown by the grant. The court say, on page 581: "No principle is known which warrants a court in implying a destruction of a right in the interpre-

tation of statutes. So penal a consequence should never be left to inference." This remark shows the spirit of the state court in applying acts of Congress to the confirmation of incomplete Spanish grants.

That these old Spanish titles were too frail to endure the critical rules of common law courts, or the force of presumptions adverse to them, was well known to the state courts in Louisiana, Missouri, and California; for the state judges come in every-day contact with the laws springing from the early colonial customs and tone; and recognize the homestead of many an ancient family as within the air lines of surveys of public lands, the incipient equitable right to which would wither and perish, under the rules of strict construction.

DECISIONS OF C. C. U. S., ON INCHOATE MEXICAN CLAIMS UNDER ACT OF 1851.

The following decisions upon the act of 1851 show, that this court has adopted the most enlarged and liberal construction of Mexican grants, in determining the cases that have come before it, and have viewed the issues made, not as a contest between opposing individuals; but as a mere form, calling for the declaration and application of principles, which cannot arise in any controversy between individual claimants for the same land, the title to which has been parted with by the United States to the one or the other.

U. S. vs. Vaca and Pena, 18 How., 556. Here "the claimant had been in possession before applying for the grant, under a license from Vallejo." On 27th January, 1843, a grant was made by Micheltorena, giving the boundaries of the land. The grant was expressed, "subject to the measurements to be made of contiguous ranchos, and the juridical possession to be given after the confirmation of the grant." A dispute as to a boundary of a contiguous ranch owned by Wolfskill having been settled by agreement, Vaca and Pena petitioned for a new grant

corresponding to such settled boundaries; which new grant was accordingly issued, and made subject also to the measurement of the contiguous ranchos previously conceded. The prior proceedings and decree of concession were passed to the departmental assembly, and the concession was approved under the condition that within four months they should put in the hands of the governor a proper map of the land. This condition, was not complied with, and it was urged, therefore, that by the very terms of the claimants' grant, it was not entitled to confirmation. This was a substantial condition, too; for without compliance with it, the subject of the grant remained undesignated.

But the court refuse to withhold the confirmation, on the ground that to do so, will work a forfeiture of the imperfect title which had been granted. The failure of the claimant to fulfill the condition was not his fault, but the result of events beyond his power; as thus expressed by the court: "But as the claimant was hindered from performing it by the revolutionary state of the country, the non-fulfillment of it will *not work a forfeiture of his title*," page 557. Nor will the court allow the imperfect title to fail, because the lands had not been designated during the Mexican government. "It is a sufficient answer to this, that the quantity is defined and the general locality," and the court add: "The claimant had been in *possession* before applying for the grant, under a license from Vallejo; the tract was known by the designation of Los Putos"—page 557. And the court thus dismiss the objection to the confirmation: "It is a condition subsequent which, at the worst, only left the title of the grantee open to be denounced."

Unless the principles recognized as correct, and applied in Fremont's case, 17 How., 542, be disregarded, the De Haro claim is entitled to the protection of the United States. In Fremont's case the grant imposed several conditions subsequent, to be performed by the

grantee, with the proviso that if not performed, the grantee "will lose his right to the land."—(p. 546.) The facts show, that according to its terms, the title was *incomplete.* There was no survey, no diseno, or other designation of the location; it was not occupied; there was no juridical possession; nor was it submitted to the departmental assembly. A stronger case of non-completion of a conditional title could not be stated. On page 561, the court say: "The chief object of these grants was to colonize and settle the vacant lands. The grants were usually made for that purpose, without any other consideration, and without any claim of the grantee on the bounty or justice of the government. But the public had no interest in forfeiting them even in these cases, unless some other person desired, and was ready to occupy them, and thus carry out the policy of extending its settlements."

There could be no doubt in the mind of the court, that Fremont did not present a title that ever had been an indefeasible one. According to the very essential terms on which his grantor had accepted it, it amounted only to a permission to enter, with a right to remain in possession in perpetuity; provided certain acts were done in the future. Thus, on the state of facts before the court, had they pronounced the strict judgment of law, it must have been; that by Fremont's own grant, his estate had never been relieved of its conditions.

But it held, that the policy of Mexico was not to vacate lands; on the contrary, it was to keep them occupied; and that a possible forfeiture, however well ascertained the cause of it might be, was not to be asserted by this government; because, in passing upon these titles, it was imperfect Mexican rights, in the light of Mexican customs and policy, that were before the court.

The court say, (page 560): "Regarding the grant to Alvarado, therefore, as having given him a vested interest in the quantity of land therein specified, we proceed

to inquire whether there was any breach of the conditions annexed to it, during the continuance of the Mexican authorities, which forfeited his right, and revested the title in the government." Why was not Fremont's title held forfeited?

Because the policy of the Mexican government, in relation to settlers on vacant lands, entitled it to the most favorable construction.

The court having concluded that under the Mexican policy the duty of the United States was ascertained, proceed to examine whether the Alvarado title was one which could be declared valid. It had been thus characterized by the attorney general, (page 549): "Fremont's claim is on a gratuitous colonization grant by the Mexican governor of California to one Alvarado, of which there had been no survey; no plan; no occupation; no site, even; no confirmation by the proper public authority; no performance of any of the conditions, precedent or subsequent, annexed to the grant; a mere naked, initiatory concession upon paper, at the date of the treaty." The court, (page 557,) thus dispose of the objections: "It appears to have been made according to the regular forms and usages of the Mexican law. It has conditions attached to it, but these are conditions subsequent. And the first point to be decided is, whether the grant vested in Alvarado *any* present and immediate interest; and if it did, then, secondly, whether anything done, or omitted to be done by him, during the *existence of the Mexican* government in California, forfeited the interest he had acquired and revested it in the government? For if, at the time the sovereignty of the country passed to the United States, *any interest, legal or equitable*, remained vested in Alvarado or his assigns, the United States are bound in good faith to uphold and protect it."

The grant, with its unperformed conditions, was held to operate to convey *some* interest; the argument admits

it to be defeasible; but had the forfeiture taken place during the Mexican government? If not, an interest, even if subject to forfeiture, is yet one which remained vested, whether it be considered legal or equitable, and the United States are bound to uphold it.

Such is the judgment of this court upon the provision of the law, saying that persons claiming lands "by virtue of any right or title derived from the Spanish or Mexican governments" shall be entitled to have "the *validity of such claim*" determined.

This court, in holding that Fremont's claim was "*valid*" under the Mexican system, evidently had in mind doubts as to whether it was "a legal or equitable" interest—but held, that was not the question then to be decided—it was simply, whether "any interest, legal or equitable," was granted by the title paper before it?

The court show, that in their opinion the title of Fremont was such, that until the conditions were removed, the Mexican government could have disposed of the land. Thus, on page 558: "It is true that if any other person within the limits, where the quantity granted to Alvarado was to be located, had afterwards obtained a grant from the government by specific boundaries, before Alvarado had made his survey, the title of the latter grantee could not be impaired by any subsequent survey of Alvarado. As between the individual claimants from the government, the title of the party who had obtained a grant for the specific land, would be the superior and better one. * * But as between Alvarado and the government, he had a vested interest."—(page 558.) And on page 563, in speaking of the defects in Alvarado's title, yet show that they do not prevent its confirmation: they may be defective for some purposes, but not, therefore, a nullity, as against the government. The court admit the power of the Mexican government to grant the land to others, and that it may be denounced by another person, desiring to settle on it, saying: "*Nobody proposed to settle on*

it, or denounced the grant for a breach of the conditions; and at the time when the Mexican authorities were displaced by the American arms, the right which Alvarado had obtained by the original grant remained vested in him according to the laws and usages of the Mexican government."

The failure to procure the approval of the departmental assembly, "disabled him from obtaining what is called a difinitive title, showing that all the conditions had been performed; but it could not divest him of the right of property he had already acquired by the original grant, and *revest it in the State.*"—(page 563.)

And the court decide, that the further necessary steps to complete the title, are either dispensed with by the impossibility of their performance by the change of government, or, if not, may be completed under the United States government; such as the particular designation of the land which was of a tract of ten square leagues within exterior limits embracing a much larger area.

This case has grown into a precedent, and is expressly recognized as a correct decision in many cases, amongst which are Larkin's case, 18 How., 557, where the court say: "The district court confirmed the grant on the authority of the case of Fremont. As that case is directly in point, we do not think it necessary to pursue the subject further."—(See also 20 How., 63, 64.) And in Castro's case, 24 How., 351: "The case of Fremont is rereferred to both in the opinion of the board of land commissioners and the circuit court, and relied on to support their respective opinions," &c. And it will appear that that the same controlling principle adopted in Fremont's case has run through the cases generally, of giving to the grantee the full benefit of such rights as he was in possession of under the Mexican government; and in view of the policy of that government as to colonization, bearing in mind that rights and titles to real estate remain unchanged, and continue as they were by the Mexican laws,

and the customs of the country. So numerous are the decisions based upon the spirit and principles established in Fremont's case, that in the index to the decisions of the district court there is one head under letter F, entitled Fremont Case, (See 1 Hoff. Rep. Index, p. 139,) which shows that in that volume fifteen cases are decided by this authority.

The case of The U. S. vs. Reading, 18 How., 1, is a decision based upon Mexican colonization laws, and rejects the doctrine of forfeiting imperfect or incomplete titles. In this case there was a grant, and the record evidence of the title was complete; but to the grant were annexed conditions which it was contended, not having been fulfilled, the title was forfeited. It was also urged that these conditions made the title *provisional, and so incapable of confirmation.* Thus, page 4: "It is said the grant was provisional only, having been made subject to the approval of the departmental assembly; and, as *that had not been given*, it passed no such interest in the land to Reading as entitled him to a confirmation of the grant." And the court proceed to state, also, that there was a condition to build within a year, and say that the evidence tends to show a performance of the condition to build; but whether or not the proof is so, the failure to comply with the condition does not deprive the party of his right to occupy the land. On pp. 5, 6, and 7 the court proceed to state the Mexican policy to colonize. This confers rights on occupants of the lands which the United States are bound to protect, as stated in *Fremont's case, which is expressly cited and largely quoted from* to show the duty of this government to acknowledge these rights; such as they were when granted; and not such as they might be held to be if the Mexican policy was the reverse of what it was; it was against forfeiture, and in favor of preserving the possession; and the court uses this expression, in speaking of the former government—"*its anxiety to colonize its vacant lands,*" (p. 8,) to

show that these grants must be construed, so that they will retain the validity they had when made, not impaired or affected by the conditions they contained. "A right and title was passed by the governor's grant, but its definitive validity was *suspended* for the approval of the assembly, and so it *continued to be suspended* until its approbation had been given, when the title became definitive. But if that was refused, it did not take away nor in any way qualify the grantee's title, but only kept its final validity in suspense until the grant had been rejected by the supreme government." (p. 7): "When the archives of the territory do not show that the governor's grants had been sent to the departmental assembly; or that, having been sent, they had been rejected, and that after such rejection they had not been sent by the governor making the grants to the supreme executive government, for its final decision; the titles of the grantees *are just what they were in their beginnings;* and are sufficient, now that the territory has been transferred to the United States, for confirmation under its statute of the 3d March, 1851. Such grants, so circumstanced, are equitable titles, protected by the treaty, and by the laws and usages of nations concerning the rights of property, real and personal, of the inhabitants of a ceded or conquered country." (pp. 7 and 8): The Mexican government had no interest in forfeiting such lands, even in these cases of unfulfilled conditions and incomplete paper titles, "unless some other person desired and was ready to occupy them, and thus carry out the policy of extend- its settlements." (p. 6): These principles are applied in declaring the effect of non-fulfillment of conditions of a grant that closed with this condition—"If he contravene these conditions he shall lose his right to the land, and it shall be denounced by any other person;" which condition is held to have this effect, viz: not to qualify the grant until denounced by some other person. Thus the court gives the answer to the general inquiry stated on p. 4, as

to whether a *provisional* grant did not involve such inherent defect as to be incapable of confirmation. The test is not, what is the legal construction of the title paper as it stands before the court, but rather this: Whether the non-fulfillment of the conditions is proven by such acts as show that the claimant had *abandoned his claim* " before the Mexican government ceased to exist, and that he was now endeavoring to resume it, from its enhanced value under the government of the United States?"—(p. 6.)

If he had not so abandoned it at the time of the change of government, then the obligation of this government is to respect the titles of the grantees just as they were in their beginnings. Causes of forfeiture not enforced under Mexico, will not be declared now, to bar a claim which had not then been forfeited.

In U. S. vs. Larkin, 18 How., 557, the same liberal spirit is applied to uphold the grant, which was in form defective; there was no description of the land, nor any limit to the number of leagues granted. But the court held that this defect could be supplied by other papers. "It is also objected that the grant does not contain the condition of confirmation by the departmental assembly, and also that there has been no confirmation by that body. The fifth regulation of November, 1828, provided that grants * shall not be definitively valid without the previous approbation of the assembly. * * There is nothing in this or any other regulation that requires this *condition to be inserted in the patent.* It appears from the records in the case, that the grant was submitted to this body by Jimeno on 21st April 1846, and that body, on the 3d of June following, referred it to the committee on public lands; but, for aught that appears, no further action was had upon it."

Thus it appears, that the title papers produced were denounced as defective in not showing that an essential condition had been complied with. To this the court say: You may cure this defect, if it be one, by consulting the re-

cord of the title. That record was produced, and furnished affirmative evidence that the departmental assembly had not approved the grant; and yet the regulations of 1828 required such approval. Then the court dispose of the objection by referring to Fremont's case, where it was settled, "*after the fullest consideration*," that the omission to show the condition complied with does not affect the right claimed; and this curative principle is applied in this case to title papers indefinite as to lands, and in their form, without the usual conditions.

But matters of form in the action of the government had thus been spoken of by the court in the earlier case of Arguello vs. U. S., 18 H., 539, thus, (p. 543): "By the fourth section, (of the regulations of 1828,) the governor being thus informed, may *accede* or not to the prayer of the petition. This was done in two ways—sometimes he expressed his consent by merely writing the word *concedo* at the bottom of the expediente; at other times it was expressed with more formality, as in the present case."

In United States vs. Sutherland, 19 How., 363, the court again lay stress upon the colonization policy of Mexico, and dispose of the objections made to the grant by the United States attorney, by treating it as a Mexican instrument; made with the design to further and advance settlement, and with no eye to the subsequent forfeiture or termination of the title. One of the objections made, was, that judicial possession of the land was not delivered until after the change of government; another, that the grant was void for uncertainty, because it defines neither boundary nor quantity—the description was merely "a tract of land known by the name of El Cahon, near the mission of San Diego."

"In construing grants of land in California, made under the Spanish or Mexican authorities, we must take into view the state of the country and the policy of the government. The population of California before its transfer to the United States, was very sparse, consisting

chiefly of a few military posts, and some inconsiderable villages. The millions of acres of land around them, with the exception of a mission or a rancho on some favored spot, were uninhabited and uncultivated. It was the interest and the policy of the King of Spain, and afterwards of the Mexican government, to make liberal grants of these lands to those who would engage to colonize, or settle upon them. Where land is plenty and labor scarce, *pasturage and raising of cattle promised the greatest reward* with the least labor. Hence, persons who established ranchos, required and readily received grants of large tracts of country as a *range for pasturage for their numerous herds.* Under such circumstances, land was not estimated by acres or arpents. A square league, or 'sitio de ganado mayor,' appears to have been the only unit in estimating the superficies of land. Eleven of these leagues was the usual extent for a rancho grant. If more or less was intended in the grant, it was carefully stated. Surveying instruments or surveyors were seldom to be obtained in distant locations. The applicant for land usually accompanied his petition with a diseno, or map, showing the natural boundaries or monuments of the tract desired—these were usually rivers, creeks, rivulets, hills, and mountain ranges. The distance between these mountains were often estimated at about so many leagues, and fractions of this unit little regarded. To those who deal out land by the acre, such monuments as hills, mountains, &c., though fixed, would appear rather as vague and uncertain boundary lines; but, where land had no value, and the unit of measurement was a league, such monuments were considered to be sufficiently certain. Since this country has become a part of the United States, these extensive rancho grants, which then had little value, have now become very large and very valuble estates. They have been denounced as 'enormous monopolies, princedoms,' &c., and this court have been urged to deny to the grantees what it is assumed the

former governments have too liberally and lavishly granted. This rhetoric might have a just influence, when urged to those who have a right to give or refuse, but the United States have bound themselves by a treaty to acknowledge and protect all bona fide titles granted by the previous government; and this court have *no discretion to enlarge or curtail such grants* to suit our own sense of property, or defeat just claims, however extensive, by stringent technical rules of construction, to which they were not originally subjected."

In U. S. vs. Fossat, 21 How., 445, speaking of cases under the act of 1851, the court say: "This jurisdiction comprehends every species of title or right, whether inchoate or complete; whether vesting in contract or evinced by authentic act and judicial possession. The object of this inquiry was not *to discover forfeitures*, or *to enforce rigorous conditions*." And in stating the questions which may, on such papers, come before this court, say: "But in addition to these questions upon the validity of the title, there may arise questions of extent, quantity, location, boundary, and *legal operation*, that are equally essential to determining the validity of the claim." (p. 449:) "The United States do not appear in the courts as a contentious litigant, but as a great nation, acknowledging their obligation, to recognize as valid, every authentic title; and soliciting exact information to direct their executive government to comply with that obligation."—(p. 450, 451.)

In U. S. vs. Pacheco, 22 How., 226, the court evidently decide the case upon the consideration of what it is the executive duty of the government to do, in view of the uncertainty of the grantee's rights, from the title-papers. The question arose only as to quantity; but the court say; there are two inconsistent and opposing parts of the description, which seem to contradict and neutralize each other; therefore, passing out of the grant, from other circumstances of the case, the court gives four leagues of

land when the grant said, "the land of which mention is made, is two square leagues, a little more or less, as shown by the map. The magistrate who may give possession will *cause it to be measured* * for the purpose of marking the boundaries, *leaving the surplus* to the nation." This was a *condition* to which the grant was made subject, and the board of commissioners held that *this condition* must govern as to quantity. The court, however, regards the condition as not controlling the equity of the case, and decides to enlarge the two leagues to four, saying: "This court is not dealing with the legal title: none such can exist until there is a survey and the land severed from the public domain, and the public title transferred by a final grant from the U. S. into private ownership. What precise tract of land is to be surveyed and granted to Pacheco's heirs, *according to the principles of equity*, must be ascertained in this proceeding, to the end that the U. S. may grant the legal title, in satisfaction of the treaty." And the court proceed to enlarge the grant, by holding that the *two leagues* were intended to be *two leagues square*, making by constructive and equitable enlargement, four leagues.—(p. 226, 227.)

THE GROUNDS OF DECISION OF THE DISTRICT COURT.

The judge of the district court states as his reasons for finding the claim not valid, as follows:

First, that only "permission to occupy temporarily was given."—(p. 186.) And, on p. 184, "The governor refused * * a grant of the land, but * determined to allow them to occupy temporarily, the tract solicited, as it was not then used by the mission." And again, (p. 185), "The governor * consented to its temporary use."

The court say that the paper to which it gives a controlling effect, is not the record nor the language in the provisional grant, but an inferior paper to

even that, namely, the expression "provisional license," used in the report of Jimeno to Micheltorena.—(See p. 22.) Thus, by the court, (p. 184,) "The language of Jimeno indicates with *entire precision* the nature of the rights intended to be conceded. He speaks of it, not as a provisional grant, but a provisional license."

It will be observed, here, that the court is stating most precisely the grounds of its decision, for it shows the weight it attaches to the language used, as that which is controlling, by adding a prefix even to the strong word precision, thus, "Jimeno indicates with *entire precision* the rights intended to be conceded."

His honor, Judge Hoffman, did not extend his observation to the next paper, on p. 23 of the record, although it was an act of two days later date, and joined in by the governor and Jimeno; there he would have found both these officers called the act done as "this provisional grant."

It is submitted, that the court below decided this case, not upon the proof, but merely upon the single paper above spoken of, namely, Jimeno's report preliminary to the grant.

Second. The next difficulty the court found in construing the title, is that the land was not subject to grant, because the future pueblo of Dolores had a controlling claim on it for ejidos—thus, p. 186: "But in the case at bar, the land solicited would evidently fall within the ejidos of the pueblo, whenever they should be measured. It had, even before the date of the petition, been enclosed by a wall built by the fathers of the mission."

The third objection to confirming, is thus stated (p. 189,) "and finally, the land, at the conquest of the country, *though it had been used by the claimants for a little more* than two years, had never been inhabited or built upon."

The fourth difficulty was, that the case here presented was not a provisional grant, such as shown in Bidwell's

case and Alviso's case, but falls within the reason on which the case of U. S. vs. Garcia, 22 How., 282, was decided.

These three last objections have been fully answered above. The district court required new and additional consideration for the Mexican grant, in asking for improvement and inhabitation of land, granted only for raising of cattle.

M. BLAIR,
F. A. DICK,
Of Counsel for the Appellants.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

THE UNITED STATES
vs.
HEIRS OF DE HARO. } No. 420.

APPEAL FROM THE NORTHERN DISTRICT OF CALIFORNIA.

Brief for the United States.

The claimants demand confirmation of their claim to what is known as the "Potrero Nuevo."

TITLE PAPERS OF CLAIMANTS.

Expediente instigated by the citizens Francisco and Ramon de Haro, in claiming the tract called Potrero de San Francisco.

Most excellent Senor Governor of the Californias:

Francisco de Haro, Ramon de Haro, in the name of our family, Mexicans by birth, and living in the ex-mission of San F'co de Assis, before your excellency with greatest submission appear and represent, that being compelled to remove from the rancho of the deceased Josè Antonio Sanchez the portion of cattle belonging to our deceased mother, and as we wish to tame the same, we beg your excellency, in the exercise of your authority, or powers, to grant us a small piece of land called Potrero de San Fran'co, in extent from north to south 2,288 varas, and from east to west 2,508 varas, measuring up to the lomerias, (or range of highlands,) because there is no competent person to do it, according to the annexed

diseño, which we submit to your excellency, and as said parcel of land can be enclosed; we intend to place in it the tame cattle, because the range of our father's cattle is insufficient and all occupied; and he has given us due permission to make a petition, as we are under parental power and control; therefore we entreat your excellency to grant us this benefit, whereby we shall receive favor and grace, making oath that we are not instigated either by malice or bad motives.

There being no sealed papers here we could not use it.

RAMON DE HARO.
FRANCISCO DE HARO.

SAN FRAN'CO, *April* 12, 1844.

MONTEREY, *April* 29, 1844.

Let the official secretary make the necessary report.

MICHELTORENA.

SENOR GOVERNOR: The mission of San Francisco now has no property (bienes) whatever, and therefore the potrero petitioned for is vacant, as the petitioners have shown by the report of the respective justice, and as the ejidos of said establishment are to be designated, I think, that in the meanwhile, the interested parties may occupy the land by a provisional license which your excellency may be pleased to give them, it being no prejudice to the community, nor to any individual whatever. The determination of your excellency will be most proper.

(Signed) MANUEL JIMENO.

MONTEREY, *April* 29, 1844.

MONTEREY, *April* 30, 1844.

Agreed.

(Signed) MICHELTOREN[illegible]

MONTEREY, *April* 30, 1844.

In view of the petition with which this espediente commences, the foregoing reports, with all other matters presenting themselves and necessary to be considered; in conformity with the laws and regulations governing the matter, I declare Francisco and Ramon de Haro favored, *in that they may occupy provisionally* the land named Potrero of San Francisco, of the extent of one-half of a square league; its boundaries being the esteros of the entrance (boca) of the potrero, and the hills that surround the same. Let the corresonding despatch issue, and registry be made of the same, and let a communication be directed to the person in charge of the said establishment.

His excellency the senor governor thus ordered, decreed, and signed, which I attest.

(Fourth seal, two reales.)

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1855.

[L. S.] MICHELTORENA.
PABLO DE LA GUERRA.

The citizen Manuel Micheltorena, general of brigade of the Mexican army, adjutant general of the staff of the same, governor comandante general, and inspector of the department of the Californias:

Whereas the citizens Francisco and Ramon de Haro have petitioned for *the concession* of the potrero which is named San Francisco, from the mouth of the esteros to the lomaria which surrounds the same, and the proceedings having been taken, and the investigations concerning the same having been made as required by

the laws and regulations in relation to the matter, I have determined to use the authority conferred upon me, in the name of the Mexican nation, *to permit them the occupation of the said potrero, subject to the measurement which may be made of the ejidos of the establishment of San Francisco, and to the following conditions:*

First. They cannot by any title sell it, nor alienate it without prejudice to some property (bienes) which the establishment of San Francisco shall have.

Second. They shall not obstruct the crossings, roads, and servitudes, devoting it to cultivation, and to the property (bienes) which they design to introduce, but within one year it shall be occupied.

The land of which mention is made is one-half a square league, and if they violate these conditions, they will lose their right to this provisional concession, which is delivered to the interested parties for their security and further ends.

Given in Monterey, on the first of May, 1844.

MANUEL MICHELTORENA.
MANUEL JIMENO, *Secretary.*

The counsel for the claimants denominate this a grant, and contend that it conveyed a property protected by the treaty.

The United States maintain that this is no grant, and that it is nothing more than a temporary permission to make use of the land during the pleasure of the Mexican authorities.

It is a familiar principle in these cases that we are to search for the intention of the parties, and if there be any room for construction or doubt, we are to look to

all the papers going to make up the documentary evidence in the case. This, if it ever needed settling, has been settled by the Supreme Court in Yontz's case, 23 How., 495:

"Ascribing to the clause usually declaring quantity only this degree of credence, then we are thrown on the recitals of the grant, and bound to look behind it to the incipient steps and to other title papers referred to, and from all these to ascertain how much land was intended to be conceded.

The claimants come before us presenting an equity, their title not being completed, because the land has never been conveyed and severed from the public domain.—(Hanson's case, 16 Peters, 200; Rosa Pacheco's case, now decided.)

"We are called on to adjudge what the equities of claimants are; and to do this it is proper to look at all the several parts and ceremonies necessary to complete the title, and to take them together as one act."—(10 How., 372.)

1. It is certain that the governor did not, in terms, grant the De Harcs this land, *i. e.*, he never gave them a *título* for it. Then what did he do in reference to their petition? He acted upon Jimeno's report; and the language of that document is a key to the whole proceeding.

Jimeno seems to have considered the land was not in a condition to be granted. He knew it was subject to be comprehended within the ejidos on their being marked off, and he reported the fact accordingly. But he also knew that the land was at that moment occupied, and he saw no objection to the temporary use of it by these young men. And he says:

"Pienso que, entre tanto, pueden vere par el terreno los interesados por una licencia provisional," &c: "I think that in the mean time they can occupy the land by a provisional license."

This language plainly means that the petitioners cannot have any ownership in the land, and that they must hold themselves in readiness to abandon it at any moment at which the ejidos should be measured off. Jimeno's report must be taken as part and parcel of their document of possession, such as it is. Having acted as governor of California, and being familiar with all the ceremonies touching the enforcement of the colonization laws, greater weight should be attached to his statements than to those of Micheltorena himself, as the latter had been but a short time in the country.

That which Jimeno *recommends* the governor to give the De Haros, Jimeno denominates a provisional license, "una licencia provisional." That which the governor *did give them*, Jimeno denominates a provisional license, "Queda tomada razon de esta licentia provisional en el libro," &c.

The court can scarcely err in following the interpretation put upon this document by Jimeno. He cannot be suspected of wishing to dwarf the privileges of the De Haros. He might have made a report utterly hostile to their pretensions, and thus have deprived them of all opportunity of using the land. For Micheltorena, not being a Californian, and having been not long in the country, it is easily seen that the petitioners were at the mercy of such a man as Jimeno, who, at that time, must have had the ear of the governor.

The *vista la peticion* has words equally conclusive: "*En que ocupen provisional-mente el terreno nombrado potrero*," &c., *that they may occupy provisionally the land;*

and permit them the occupation of the said potrero; "*permiterles la ocupacion del potrero mencionado,*" are words having the same meaning, and which are most justly rendered by the secretary as signifying a provisional license.

II. As a test of this question, let us suppose the ejidos had been surveyed, and this land had been included within their limits, and that the governor had made a formal grant to some other person, could the De Haros have prevailed against him? In vain would they have averred that the ejidos being ascertained, there was no longer any impediment to their being favored with a grant for the land itself. Of that matter the governor was the sole judge. His acquiescence in a demand for land was not final, for the assembly or the mother government might reject it. But his refusal to grant was final and conclusive, and from it there lay no appeal.

An examination of the permit will show that it was written by Francisco Arce or Vicente Gomez, probably the latter. The copy, however, retained in the archives is obviously the writing of Jimeno; and in making it, he did something plainly showing how strongly the difference between a grant of land and a mere permit of occupancy was pressed upon him. In copying the third clause he ran ahead of the language of the original, and wrote, "*perdera su derechos al terreno y sera*" —the usual clause being; "he will lose his right to the land, and it will be denounceable by another," &c.

On remembering that the document he was copying was not a grant of land, he erased the words *al terrena y sera*, and then continued the copy in conformity with the original; the sentence reading not "he will lose his right to the land," &c., but "*perdera su derecho a esta*

consesion provisional," "he will lose his right to this provisional concession."

At page 8 of the espediente, his erasure of the words "*al terreno y sera*" is plainly seen. He knew very well the De Haros were getting on "*derecho al terreno,*" and so he promptly crossed out the words. If it had been intended they should have such a right, Jimeno would have spoken to the government, and the original would have been altered in conformity with such intention. But the idea of giving then a license, and not a title, either permanent or provisional, originated with him; and he saw it carried out. Indeed, the acts and doings of Jimeno gave character to the document signed by Micheltorena, and fix its meaning with certainty. It is, in the language of the Supreme Court, "one of the parts and ceremonies necessary to complete the title," and should, with the other papers, "be taken as one act."

III. The power of the governor to create an interest in land such as that claimed here may be doubted.

In Cambuston's case, and elsewhere, the Supreme Court has emphatically said the powers of the California governors, touching the public dominion, are to be found in the law of '24, and the regulations of '28.

The policy of the colonization laws was to reduce those lands to private ownership, and by attaching men to the soil, aid in attaching men to the government. It has been said that "men have a sense of property." But there is nothing in the mere permission to occupy the land of another calculated to create a lasting interest in it; and we may suppose that if the government believed its interests could be subserved by the distribution of licenses of occupation, as well as of donations

of the soil itself, they would have said so in the colonization laws. If these be the measure of the governor's authority, we look in vain for any power conferred upon him to make gifts of any sort short of interest in the soil itself. Licenses and leases, and all transient interests in the mere use of the public domain, appear to have been repugnant to the theory of the Mexican colonization laws, which looked to the permanent identification of the individual with the land over which he was to exercise dominion and control.

The President of the United States has power to make sales of the public lands, and to lease mines.—(Brightly's Dig., p. 488.) But this power of sale does not include the power to lease gold mines.

"The sales of the public lands—the territorial property of the United States—have been in all cases directed and regulated by law. A lease is a disposition by grant of a limited interest in lands leased, and cannot be made by mere force of executive power without the previous authority of law."—(Op. Att'y Gen., vol. 4, p. 487.)

A power to sell does not include a power to execute a mortgage.—(Wood *vs.* Goodbridge, 6 Cush., 120.)

"It has been repeatedly decided in this court that a contract to sell and convey land upon certain conditions therein contained, does not of itself convey a license to enter and commit waste, by destroying the timber."—(9 Johns., R. 35, 331; 7 Cowen, 229.)

"And if so, it obviously follows that an agent or attorney, who only has power to bargain and sell, (subject to confirmation,) has no authority to license any one to enter and commit waste or cut the timber." (7 Wend., 446.)

"Of the nature of a lease is a license to occupy, use, or take the profits of lands. This, however, seems to pass no estate, but merely to confer a certain right or privilege. It is a mere authority to enter upon the lands of another, and do an act or series of acts without having any interest in the land, founded in personal confidence, not assignable, and valid, though not in writing."—(Hilliard on real property, vol. 1, p. 233.)

In Jackson *vs.* Babcock, (4 Johns., 418,) Goodrich being the owner of real estate, gave a written permission to Hitchcock to build upon the land, and enjoy and use it as long as he pleased. Hitchcock sold the improvements to Cragie, and the court said:

"The instrument of writing given by Goodrich to Hitchcock was a mere license or personal privilege to inhabit. It conveyed no title to the premises. As soon as Hitchcock sold the premises to Cragie, it put an end to the privilege granted by Goodrich. The plaintiff is clearly entitled to recover."

"A license given by the owner of land to erect a house on such land for his use operates only as an excuse for the act, and passes no interest in the land."—(Prince *vs.* Case, 10 Conn 378.)

"A license to erect a dam across a stream running through the land of another, is revoked by a sale of the land."—(Carter *vs.* Harlan, 6 Md., 20.)

"If a man gives a license and then parts with the property over which the privilege is to be exercised the the license is gone. A license is a thing so evanescent that it cannot be transferred."—(Coleman *vs.* Foster, 37 E. L. and E., 490.)

"A grant passes some interest or estate corporeal or incorporeal in the lands which it embraces, can only be made by an instrument in writing under seal, and is ir-

revocable when made, unless an express power of revocation is reserved.

"A license is a mere authority, passes no estate whatever, may be made by parol, is revocable at will, and when revoked the protection it gave ceases to exist."—(Jamison *vs.* Willeman, 3 Duer, 258.)

IV. The governor's power to make any disposition whatever of this particular land may be doubted.

The question of the existence of a *pueblo* here is now set at rest.

Every *pueblo* was entitled to four leagues square as common lands, (*ejidos.*)

It is useless to go into an examination of the authorities on this subject. They are collated and commented on in the hotly contested case of Hart *vs.* Burnett, (15 Cal., 530. We quote from two portions of the opinion:

"II. Had this pueblo a right or title to any lands? And if so, to what lands?

"In examining these questions it will be necessary to recur to the laws and authorities already referred to. All the old Spanish laws relating to the foundation and government of pueblos in the Indies seem to admit the fact that such municipal organizations possess *some* right to and some control over the lands upon which they are established and which are included within their limits. In this respect there does not seem to be any essential difference between pueblos founded by an individual *poblador* or *capitulante*, and those founded by the actual settlement of a number of families voluntarily uniting together without any contract or capitulation. A pueblo when once established, (no matter how or by whom composed,) and officially and legally recognized as such,

came immediately within the provisions of the general laws relating to pueblos, and was entitled to all the rights and privileges, whether political, municipal, or of property, which the laws conferred upon such organizations or corporations. Sometimes, however, special laws and regulations were made for particular places. Such seems to have been done in very early times, with respect to the infant establishments of Monterey and San Diego, and the pueblos of San José and Los Angeles, and the villa of Branceforte in California.—(Recop. de Indies, book 4, tits. 5 and 7. Regulations of Presidios of 1772. Bucareli's Instructions of 1773. Neve's Regulations of 1779. Ex. Doc. No. 17, 134 *et seq.* Navarro's Opinion, October 27th, 1785. Ugartey Loyola's Order, June 21st, 1786. Nava's Order, October 22d, 1791. Limantour Land Com., Ex. 'O.'')

By law six, title five, of book four, of the Recopilacion, a new town, containing at least thirty inhabitants and the other requisites for a municipal organization, was entitled to four square leagues of land, to be laid off in a square or prolonged form, as the nature or circumstances of the land might require. This right of a town when duly organized to this extent of land is particularly referred to and repeated in the Royal Instruction of 1789 for the plan of Pitic, which plan was made applicable to all new towns that should thereafter be established in California as a part of that general comandancia. The particular municipal organization of such new towns was to depend, under the laws, upon the name or title given them, as ciudad, pueblo, villa. It will be noticed that the town of Pitic was organized out of the presidio of San Miguel, which was removed to that locality for the purpose of forming, guarding, and protecting the new settlement.

In the order of 1791, by the commandant general to the governor of California, for the formation of pueblos out of presidios, it is also specially directed that the extent of land for each of these pueblos should be four common leagues, measured from the centre of the presidio plaza or square, viz: two leagues in each direction.

Of course, under the law and Royal Instruction above referred to, and upon which this order was based, this form and these dimensions were to be changed according to the nature and circumstances of the land, as when the presidio was adjacent to the sea or on a bay, or where any portion of the land within such general limits had become private property or had been devoted to some other special object.

It does not appear that any formal grants of land were made to the new pueblos in such cases, but their right or title, whatever it was, to land to the extent of four square leagues or less, as the case might be, seems to have vested, *ipso facto*, on the formation or official recognition of such town, and that the powers of the municipal officers over such land resulted from the general laws immediately on the municipal organization and their election and entry upon the duties of their respective offices, and that these powers might be restricted or enlarged by the political authority of the State.

It is true that in the case of Pitic, and in some other towns, an officer was appointed to mark off the boundaries of the four square leagues, and to designate the particular kinds of land and the uses to which they were to be applied within such limits; but the right to title, whatever that might be, "to the land so marked

out" could not result from the act of measurement or survey. And as no subsequent grant was made or seems to have been contemplated, the title, if any passed at all, must have vested, *ipso facto*, upon the organization of the pueblo. Such seems to have been the intention of the laws themselves, and the construction put upon them by the officers by whom they were administered.

It follows, from what has been already stated, that when near the close of 1834 a municipality was erected at the presidio of San Francisco by order of the governor and territorial deputation of California, and that place was officially recognized as a pueblo, and its organization completed by the election of the municipal officers provided for by law, such pueblo became, *ipso facto*, vested with some right or title to four square leagues of land, measured either in a square or prolonged form, from the presidio square as a general centre point, excepting so much of the space within such general limits as might not be susceptible of grant on account of its being water, the private property of individuals or corporation, or lands dedicated to or reserved for other purposes.

Before proceeding to investigate the character of this right or title, we will premise a few remarks upon the character of the land embraced within the limits described, in order to give a general idea of the claim of the new pueblo and its boundaries.

It appears from official maps made under the direction of the United States surveyor general and the Superintendent of the United States Coast Survey, that the old presidio of San Francisco was situated near the middle of the northern extremity of the peninsula formed by the ocean and the bay of that name; that the

width of this peninsula, as far south as the Mission creek, is less than two leagues, and that still further south, to the Buri-Buri or Sanchez rancho, the average width is just about two leagues, although two or three points, as Lobos and Avisadero, project somewhat beyond these points, very nearly corresponding with indentations, as Mission bay and Merced lake, on the opposite sides. Of course the pueblo could acquire no right or title to the ocean or bay, and consequently, according to the law of its foundation, the four square or common leagues would be taken in a prolonged instead of a square form.

Again, it appears from the documentary evidence, and from other authentic sources, that at the time of the formation of this pueblo there was a fort or battery, with its buildings and appendages, at the entrance of the Bay of San Francisco. It would seem that the fort and the land pertaining thereto and necessary for its service, would be excepted out of the pueblo claim, for it is understood that such establishments were not, under the Spanish laws, susceptible of acquisition by town settlements or by colonization.—(Mitchell *et al. vs.* The United States, 15 Pet., 86 *et seq.*)

Again, it also appears that long prior to the organization of this pueblo, there existed, within the limits of the four square leagues, an establishment called the "Mission of San Francisco," or "of Dolores," with some sort of claim or right to the lands in that immediate vicinity. Perhaps some of these lands were also so dedicated or reserved as to exempt them from any right or title which the pueblo acquired by its organization. If so, what was the extent of the land so reserved or excepted? It appears that in very early times some disputes arose with respect to the lands

which the inhabitants of the presidio and mission were respectively entitled to occupy and use, and that some line of division was established between them, corresponding to, or near to Mission creek, and to what is now called the Vallejo line. The lands north of that line, wherever it may have been, were generally called "Presidio lands," and those on the south, as far as San Mateo creek, or the northern boundary of the Pulgas rancho, were called "Mission lands." It also appears that the ordinance, or regulation of 1828, exempted the lands actually occupied by the Mission from colonization "at present," and until it was determined what right the mission establishments had in these lands. The secularization law passed in 1833, and various measures were subsequently taken by the authorities of California to organize the missions into pueblos, and to reduce their lands to colonization.

It further appears, that on the 3d of November, 1834, a curacy was authorized for the Mission of Dolores which was one step in the operation secularization; but that at a later period it still retained some of the characteristics of a mission, although portions of the land which it had formerly occupied in the direction of San Mateo and across the bay had already been disposed of by grants to private individuals.

The land commission and the United States Supreme Court have decided that these titles were valid, and that the lands previously occupied by the mission establishments were subject to grant in colonization. Moreover, the commissioners and the law officers of the government have decided that the Mission church, cemetery, buildings occupied by the priest, and a small piece of land pertaining to these as curtileges, were dedicated

to the use of the Catholic church, and consequently were not susceptible of grant or private ownership.

It would seem, from these facts, that in December, 1834, when the pueblo was organized, this pueblo could not acquire any title to these "church lands," which were occupied by that establishment, although lying within the general limits of the four square leagues designated by the laws. Perhaps, however, when the occupation by the Mission ceased, such of these lands as had not been granted in private ownership, or dedicated to pious uses, became subject to the general right of the pueblo as pueblo lands. There are certain facts shown by the evidence in this case which confirm this view. At first, the municipal authorities of the pueblo made no grants at the Mission, but subsequently, under the orders of the governor, the same alcalde granted *solares* alike at the place called "Yerba Buena" and at the old "establishment of Dolores," the latter being limited to fifty varas square.

But it is unnecessary to investigate or decide this question here, for it is admitted that the land now in dispute is north of Mission creek and within the tract confirmed to the city of San Francisco, under the act of March 3, 1851.

We have thus far considered the question of the establishment of the pueblo of San Francisco, and its limits, without any reference to what is commonly called the "Zamorano document," the genuineness of which has been strongly contested in the arguments of counsel. The only tribunal which has judiciously investigated the character of that decument seems to have considered its genuineness sufficiently established. But, even admitting its genuineness to be beyond all doubt, we attach

to it very little importance for the purpose of this investigation. The more important facts mentioned in it—the order of the governor and territorial deputation of 1834 for the election at the presidio of San Francisco of an ayuntamiento, and the official recognition of the change of that presidio into the pueblo of San Francisco—are also abundantly proved by other documentary evidence, the genuineness of which has never been called in question. The only effect of the Zamorano document would be to restrict at that particular time the possession of the pueblo to a space less than the four square leagues to which it was entitled under the law. And there is much evidence outside of the document to show that such was the fact. But, as already stated, it is unnecessary, for the purposes of this case, to determine that question, and we therefore have left that document entirely out of consideration.

Nor do we deem it necessary to follow counsel through their elaborate discussion respecting the history of the missions, and the numerous acts and regulations of the governors and the legislatures of California under the law of 1833, respecting the secularization and conversion of the establishments themselves into pueblos, and the colonization of the land which they had previously occupied. According to our view, the pueblo of San Francisco was first formed out of the presidio of that name, and not out of the mission; and, consequently, the question of its original formation was in no way dependent upon the law of secularization. There are, however, some things connected with the execution of that law which serve to explain certain facts in the subsequent history of this pueblo. It would be very natural, upon the partial or entire secularization of the Mission, considering its advantageous position, and

superior quality of the land at that establishment, the location of the church, the residence of the parish curate, &c., that a portion of the pueblo settlers and of its municipal officers would establish themselves in that place. We accordingly find that, in the infancy of the pueblo, or in 1837, according to the testimony of Sanchez, the secretary of the ayuntamiento, most of the inhabitants not engaged in commerce did reside there, and also that several of such residents at the old Mission were, at different times, members of the ayuntamiento. There is, too, some evidence to show that in 1836 or 1838, permission was asked of the governor to hold the sessions of that body at the old Mission, and as they were so held, it is to be presumed that the request was granted. A few of the inhabitants who were engaged in commerce located themselves at a place called "Yerba Buena," on account of the advantageous anchorage for shipping in the cove of that name. And, as commerce increased, that little settlement, notwithstanding the nature of the soil, but with the larger element of foreign population, which is shown to have been introduced there, very soon outstripped the settlement at the old Mission, which was mostly composed of a less enterprising population of Mexicans. Moreover, it was natural that foreigners, who were mostly engaged in trade, should call that place the "pueblo of Yerba Buena," while the old inhabitants of the country should apply to it and to the old mission the general terms, "Pueblo of San Francisco" or "Pueblo of Dolores," as is testified to by various witnesses. It was also very natural that, in the course of time, the names "Pueblo of San Francisco," "Yerba Buena," "Port of San Francisco," "Mission of Dolores," "Pueblo of Dolores," &c., should by different persons be applied in-

discriminately, either to the entire northern portion of the peninsula, or to particular parts thereof. This, it seems to us, fully explains and reconciles some apparent contradictions in the parol and documentary evidence. Again, it should be observed that the term "de Assis," which is sometimes affixed to the name "San Francisco," although, perhaps, more usually applied to the Mission, was a part of the appellation of the saint whose name was given to the bay when it was first discovered, which appellation belonged alike to the bay, the fort, the presidio, the mission, and the pueblo—all of which took their name from the same saint. That these words should be more often added in speaking of the mission is very natural, because there were other missions in California called after other saints by the name of Francis, as the Mission of Sonoma, which took its name from San Francisco de Solano; the mission below San Diego, which took its name from San Francisco de Borja, and the mission further south, which took its name from San Francisco Xavier.—(Butler's Lives of the Saints, *verbo* Saint Francis; Life of Padre Ugarte; Vetnega's History of California; Life of Padre Junipero Serra; Garcia y Cubas' Carta de Baja California.)

The evidence in favor of the existence of a pueblo in San Francisco prior to July 7, 1846, and of its general right, for pueblo purposes, to four square leagues of land, to be measured—according to the ordinanzas—from the centre of the plaza at the presidio, is, to our minds, irresistible."

That the "Potrero" is within these limits will not be questioned.

It would seen that the *ejidos*, by their nature, were not susceptible of private ownership. They were for

the common use of all the inhabitants; they could not be built upon, nor gained by prescription.

"*Ejido.*—El campo ó tierra que está á la salida del lugar, y no se planta ni se labra, y es comun para todos los vecinos. Viene de la palabra latina *exitus*, que significa *salida.* Los ejidos de cada pueblo estan destinados al uso comun de sus moradores: nadie por consiguiento puede apropriarselos ni ganarlos por prescription, ni edificar en ellos, ni mandarlos en legado."—(1 Escriche, p. 687.)

José C. Bernal petitioned for a tract of tract called Rincon de Salinas y Potrero Viego. In 1835 Governor Figueroa rejected his petition because the land was comprehended within the limits of the ejidos, using this language:

"As it appears, from the preceding reports, that the land asked for by José Cornelio Bernal is of the property of the pueblo of San Francisco de Assis, to which it serves as *ejidos* for the common cattle, the petition is not granted, as it cannot be given in ownership (en propriedad,) but the party interested may keep his cattle there, the same as other citizens do."

The father of these De Haros himself petitioned for a tract of land in 1835. The petition was referred to Flores, administrator of the ex-Mission of Dolores, who reported adversely to the petition, and among other reasons, gave this:

"On account of the *ejidos* or *proprios* not being marked out which I think should remain to this ex-Mission upon its being erected into a pueblo."—(See Expediente 86 in surveyor general's office.)

De Haro never obtained the grant for which he applied. Bernal, however, renewed his application in 1839, and accompanied it with proof that the adminis-

trator of the mission did not need the land, and in 1840 Bernarl obtained a grant for the land.

The Mexican archives disclose many examples of rejections of petitions for land within the limits of *ejidos*. The citation of one or two suffices, however, for the purpose for which the subject is mentioned here. That purpose is to show that the power to dispose of such lands was involved in, at least, some doubt.

Bernal's grant has been passed upon by the supreme court of California.—(Brown *vs.* City of San Francisco, 16 Cal., 457.)

That court decided that the governor had ample power to make a grant of land, though it were comprehended within the *ejidos*, and that the fact of making the grant raised a presumption of power in the officer to make it.

"We remarked, in Hart *vs.* Burnett *et al.* (15 Cal., 549:) 'If governors have granted lands within the general limits of pueblos, it will be presumed, unless the contrary be shown, that such grants were made in accordance with the objects and uses for which such lands had been assigned and dedicated by the laws to the pueblos. The whole matter was subject to the control and direction of the governor and territorial deputation, and the official acts of such officers, within the general scope of their powers, are presumed to have been done by lawful authority.'

"The correctness of the general principles here announced is not disputed, but counsel for appellants have attempted to destroy the force of this presumption, by showing that this grant was not made by lawful authority, but in violation of positive law.

"In the first place, it is said that this land being within the general limits of the pueblo, the law of 1824,

and the regulations of 1828, have no application, and gave no authority to make the grant; and that it is to be inferred that this grant was made only under the authority of that law and of those regulations, because no others are recited or referred to in the grant.

"On the contrary, it has been well settled that a grant may be made under other and different authority than that recited in the grant, and that the grant may be valid, although the authority referred to in it may prohibit it being made.—(United States *v.* Perchman, 7 Peters, 95.)

"Nor does it by any means follow that, because a particular tract of land, or some portion of it, falls within the general limits of a pueblo, this pueblo has such right or title to this land as to exempt it from the general operation of the granting powers of the governor and deputation. The whole course of our reasoning in Hart *v.* Burnett *et al.*, was opposed to this view of the character of pueblo titles. It is unnecessary to repeat our arguments here.

"Supposing this grant to have been made exclusively under the authority conferred by the law of 1824, and the regulations of 1828, it is contended that no presumption of power to grant this land can arise, because the Supreme Court of the United States decided against such presumption in the case of Cambuston, (20 Howard, 63.) We do not so understand that decision. It does not pretend to overrule any of the former decisions of that court with respect to legal presumptions. It simply says, that where the authority to make the grant is expressly conferred, and the terms and conditions expressly prescribed by the law, the court must look to the law for both the power to make the grant, and for the mode and manner of its exercise. No deviation

from the mode and manner prescribed in the law has been suggested, and even if there had been, it may be questioned whether, after final confirmation and patent by the United States, we can inquire into the effect of any such alleged deviation; and if the land belonged to the nation, there could be no question of the power to make the grant. The presumption is, that it did so belong to the nation, until the contrary is shown. This has been attempted, by showing that it was within the legal limits of the pueblo; but, as already remarked, that is not sufficient. As shown in Hart *v.* Burnett *et al.*, the legal title to this land may, nevertheless, have remained in the nation, notwithstanding its general dedication or assignment to the pueblo. The only question then to be considered is: Was this grant a violation of the general object and uses to which this land was assigned or dedicated? In other words, did such assignment or dedication remove it from the exercise of the general authority to grants conferred by the laws? This cannot be presumed; it must be shown. But how is this shown? Certainly not by the grant itself, for such a grant, on the very outskirts of the pueblo lands, and at a considerable distance from the principle settlement, is not *prima facie* evidence that it was contrary to the general object of building up a town by encouraging settlement and cultivation, but, on the contrary, that it was conducive to that object. Moreover, the governor, in this case, consulted the authorities, both of the pueblo and of the mission establishment, before making the grant, and neither made any objections. It is true that objections were made by the authorities of the mission in 1834, before the organization of the pueblo; but these objections had all been removed when the grant was made and confirmed in

1839 and 1840. The governor and departmental assembly seem to have acted with a full understanding of all the circumstances of the case, and we are not disposed, without good and substantial reasons, to question the authority and legality of their acts."

The court decides that the governors were clothed with power to grant away the *ejidos*, as their powers were in existence when the colonization law of 1824 was passed.

Sec. 2 of that law reads thus: "The objects of this law are those national lands which are neither private property nor belong to any corporation or pueblo, and can, therefore, be colonized."—(Rockwell. p. 451.)

And with regard to the presumption of the governor's power, and the source of his power, Cambuston's case, (20 How., 63,) says:

"The question here is not whether the fact of the habitual grant of lands by Mexican governors of the territory of California to settlers, and also, whether the customary mode and manner adopted in making grants do not furnish presumptive evidence both of the existence of the power and of a compliance with the forms of law in the execution? We agree that the affirmative of these questions has been frequently determined by this court in cases involving Spanish titles in the Territories of Louisiana and Florida, (6 Peters, 729, 731; 9 ib., 134; How., 347.) But no such presumptions are necessary or admissible in respect to Mexican titles granted since the act of 18th of August, 1824, and the regulations of 21st November, 1828; authority to make the grant is there expressly conferred on the governors, as well as the terms and conditions prescribed upon which they shall be made. The court must look to these laws for both the power to make the grant and for the

mode and manner of its exercise, and they are to be substantially complied with, except so far as modified by the usages and customs of the government under which the titles are derived, the principles of equity, and the decisions of this court."—(17 How., 542.)

The court plainly says that the presumption of power in the officer does not obtain with reference to grants made posterior to 1824. The supreme court of California says the contrary. In such a conflict this court will hardly feel at liberty to follow the latter authority. If Cambuston's case is to be overruled, the court, of last resort, should overturn it; for, from the doctrine enunciated in that case, this court does not sit on appeal. Cambuston's case has furnished the law and settled the fate of many cases, and there is no reason why it should not be enforced in all the fulness of its original vigor.

The colonization law of 1824 exempts pueblo lands from its operation. The governors are declared by the federal Supreme Court possessed of no authority, since 1824, to grant lands not comprehended within that law. This court is bound by the precedent which that declaration establishes, whatever this court might think if the question were an open one.

V. We have shown that if it be not clear that the governors were without power to grant lands such as those in question, the existence of such power was at least doubtful.

If it was a doubtful power, how easy is it to account for Jimeno's report in this case! Let it be remembered that the De Haros did not petition for a provisional license—*una licencia provicional.* They were authorized by their father to ask for a title to the land,

notwithstanding the fact that he had been repulsed after having made similar demand for a portion of the *ejidos*. The governor did not at once reject their petition, for it is not at all likely he knew anything of the subject. If Jimeno had been silent concerning the *ejidos*, the governor would have granted the land pursuant to the prayer of the petition, for the object was cultivation and improvement, and the candidates as worthy as any. Jimeno must have doubted the governor's power to grant De Haro's prayer, and hence the *informe* and the *licencia provicional*.

VI. And now we see the marked difference between this and Alviso's case, which, on reading the claimant's brief, seems to be their *cheval de bataille*. In that case the petitioner took possession of the land, and improved it with the intention of getting a final title. The governor and the petitioner both so *intending*, their concurrent intention, fortified by years of cultivation and improvement, raised the equity which this and the Supreme Court felt bound to enforce.

In this case the De Haros took possession without the intention of getting a final title. *The informe was against them.* The governor empowered them to occupy, and, at the time, did not intend to grant a final title. This is clearly shown when we consider the petition, the *informe*, and the license. The De Haros asked for a grant. They wanted not a *licencia provicional*, but a title, *en propriedad*, in ownership. It was not conferred upon them; therefore it was refused them. They must have read the *informe* of Jimeno and the document the governor gave them; and they must have rested content with the lesser bounty he chose to bestow upon them. It was much more than their father

obtained, for his claim for a portion of the *ejidos* was absolutely rejected. It was he, apparently, who initiated the proceedings. His wife was dead, having left the boys some cattle, and he authorized them to ask for this land. It is more than likely, upon learning that they had obtained the license, the old man rested quite content, and that the sons, in accepting [if they accepted] the governor's bounty, shared in their father's satisfaction.

After Micheltorena signed the document, nothing remained to be done. All that he intended to give the petitioners, they had. They took no possession while proceedings to obtain a *titulo* should be pending. Their diseño was made. The *informe* was in. They took possession [if at all] only *after* the document, which the governor intended should embody all their rights, had been executed and delivered to them. He promised them nothing more. They had nothing further to do, so far as the governor was concerned, for they expected nothing more from him; and this feature shows the radical difference between this and the cases in which possession was taken pending proceedings to prepare and sign the definitive title, and to which cases the claimant's counsel vainly seek to liken this.

VII. Garcia's claim for a confirmation was far stronger than this. The permit to occupy in this case was dated May, 1844. In Garcia's it was dated November, 1844. The language was:

"If you should happen to select any tract of land you are empowered to occupy it with your said property, and to take possession of it while the usual procedure is being prosecuted, presenting the requisite sketch."

Garcia selected the land, built a house upon it, placed a large herd of cattle on it, and had his laborers at work there. Your honor saw nothing in all this amounting to an equity, for, in lieu of a grant or promise of one, the document issued by the governor was held to be a *licencia provisional*—a provisional license.

"If this claim is to be confirmed, every provisional license or permission temporarily to occupy land must be held to constitute an equitable title, provided the claimant has availed himself of the permission; a ruling which would astonish no one more than the old inhabitants of the country, by whom the importance of obtaining a 'title' from the governor was well understood."—(22 How., 282.)

The Supreme Court adopted this language, and it stands now as the opinion of that court, and the motive for declaring such a claim to be without warrant of law; and yet the petitioner, Garcia, intended to get a grant when he took possession, and the governor intended, upon his complying with the remaining ceremonies required by law, to give him one; and this, be it remembered, was not what is called in their system a gratuitous donation. It was a remunerative donation. Garcia had served his country as a military officer for many years. The public exchequer was empty. This claim for payment was shown at the hearing to amount justly to some thousands of dollars, and the governor recognized it, speaking of the intended grant of land "as a recompense for the services rendered by you to the nation."—(p. 281.)

"The words of the grant are positive and plain. They purport to convey to him a present and immediate interest; and the grant was not made merely to carry

out the colonization policy of the government, but in consideration of the previous public and patriotic services of the grantee. This inducement is carefully put forth in the title papers; and although this cannot be regarded as a money consideration, making the transaction a purchase from the government, yet it is the acknowledgment of a just and equitable claim, and when the grant was made on that consideration, the title, in a court of equity, ought to be as firm and valid as if it had been purchased with money on the same conditions."—(Fremont's case, 17 How., 558.)

This language of the Chief Justice shows the character of Garcia's claim. He was a creditor of the nation; but the nation owed the De Haros nothing; and yet the morally strong equitable claim Garcia presented was rejected, because he had only what Jimeno declared the paper in this case to be, viz: a *licencia provicional.*

VIII. The right conferred upon the De Haros amounted to nothing more than usufruct.

Usufruct is defined to be the right to enjoy a thing the property of which is in another.

Usufruct, use and habitation, are personal servitudes. All servitudes are incorporeal things or mere rights.—(Escriche, vol. 2, pp. 843–'44.)

Usufruct becomes extinct by a transfer of the right of the usufructuary, as the right, being personal, is not transferable.—(Escriche, vol. 2, p. 915.)

Usufruct, use, and habitation expire by the natural death, and by the civil death of the person who had a right to them, because this right is personal.—(1 Dornat, 427; 3 Partida, tit. 31, 1, 24.)

Usufruct, use, and habitation are known as personal servitudes.—(1 Feb. Mej., p. 196.)

Usufruct comes to an end by the death of the usufructuary, though not by that of the proprietor.—(Id., p. 200.)

The death of the De Haros prior to the change of flags is not questioned. By their death the usufruct in this land expired; for the right being personal to them, could not survive them.

IX. The right of the De Haros, even if it survived them, is a right that cannot be enforced under our Constitution and laws. It is a right or claim for which no patent can issue. The language at page five of the claimant's brief—"Whatever force and effect it had under the former governments is accorded to it under this by the legislation of Congress"—is not justified by a just view of our system, for we have no legislation of Congress providing for gratuitous licences of the public domain for agricultural purposes. The domain of California was acquired by us unshackled by any obligation to recognize pretenses at war with our own system of government.

"Every nation acquiring territory by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it."—(Pollard *vs.* Hagan, 3 How., 225.)

X. Equally erroneous is this language of the brief at page five: "The document styled itself a provisional concession, and speaks of rights acquired by it." The document speaks of the right of the De Haros; but the right referred to was a right not in or to any land, but to the license by which it was to be occupied. No mention is made of rights acquired by it: "perderan

su derecho á esta concesion provicional," described by the secretary, when he comes to record it, as a *license.* A loss of right to land was provided where land was granted; but as none was granted here, the *loss of the right referred to is the loss of a right to the license itself*, and nothing else.

XI. At page four of the brief it is said that the De Haros were authorized to go into possession of the land, build their houses, and "make their homes."

This, no doubt, was intended to bring before the judicial eye the repulsive spectacle of turning them or their kindred out of their homes by a rejection of their claim. One would suppose the De Haros were a couple of sturdy husbands and fathers, found established with their families in their homesteads on the arrival of the Americans, and to disturb whom were an act of national cruelty.

Quite differently do they describe themselves. Far from being the staff and support of others, they were themselves in a state of pupilage. They could not even become suppliants before the governor without asking permission of their papa: "He has given us due permission to make a petition, as we are under paternal power and control."—(See their petition to the governor.)

Unable to make a contract without the intervention of their natural tutor, (see Escriche, *Menor*,) his house being their home, and all their acts being under his direction and control, these legal infants cut but a sorry figure when, by inuendo, they are pictured as the masters of domicils, with homes too sacred to be disturbed. On this part of the case the pathos was sadly wasted.

XII. We have thus far considered the claim as if it were fortified by actual possession and cultivation.

But the fact of possession is disputed.

The De Haros built no house, nor did they occupy the land so as to raise an equity in their favor.

Mr. Rose came to the country in 1849, and of course, cannot know anything of it.

F. Sanchez, says the land was in possession of the Mission until 1846. After the Americans came, it was said the Potrero belonged to the De Haros. The De Haros never lived upon the land, or built a house on any part of it. He knows they did not occupy it, for he was the brother-in-law of F. De Haro, sr., and the sons died in 1846, before which time the land was considered as vacant; and they occupied from 1844 to 1846 by the animals of the inhabitants of the Mission.

J. P. Leese knows nothing personally about it.

Observe that H. F. Teschemacher testifies that he saw the horses of the De Haros there from 1842 to 1846—being "two years previous" as well as "two years subsequent" to the obtaining of the provisional license—which shows that the occupation of the land was in no ways modified or changed by the obtaining of the license; but thereafter as heretofore they continued (in common with all the inhabitants of the mission) in the enjoyment of it, as pasturage ground. He obtained permission of Guerrero who was prefect or administrator and was therefore the proper person to apply to in such a case.

H. F. Teschemacher.—By report this place belonged to the De Haro family. Witness sent his horses there to recruit, by permission of Guerrero.

(It will be observed that this witness says nothing about a house built or occupied by the De Haros. If

they had had one, he would have known the fact.)

C. A. Bernal says they had a house which they built, and that they occupied the land with cattle and horses.

(This witness makes it appear that no one pastured cattle there without permission of the De Haros, and is flatly contradicted by Stuart, Rideout, and Davis.)

G. Briones.—This was a witness to the juridical possession said to have been given by Padilla.

T. San Feran.—There was no house on it up to 1847. Everybody—all the world—pastured cattle there previous to 1847. Had cattle there himself, and no person claimed the right to exclude him. The De Haros made no improvements prior to 1847.

D. Waling.—There was no house on the land in 1847, when he first knew it.

V. Miramontes.—Has known the "Potrero" all his life. The De Haros never had possession of it. It was public to the citizens at large for their cattle. The De Haros lived at their father's house at the Mission, and at the Rancho San Bruno. They never did live at the "Potrero."

T. Vasquez.—Was Administrator of the Mission. There was no house on the land prior to the American occupation of the country.

The only positive testimony for the claimants is that of Mrs. Bernal. The body of the evidence completely overwhelms the pretense of exclusive occupation by the De Haros, their building and occupying a house. As well might San Feran, or any other resident at the Mission who used the land for pasturing, set up an equitable claim to it arising out of pasturing cattle. That there was no house there is a fact positively deposed to by several persons, and fortified by the circumstance that Teschemacher does not say there was a house the

And what use had these young men for a house? Neither of them had a family. They constituted a part of their father's family. It would seem from the evidence that they had no occasion but for a very small part of the lands, for the whole community made use of it as pasture land at pleasure.

Even the stone wall of which Mr. Rose speaks, was built by the Mission priests. Surely such acts as these—acts in which the whole public participated—are not to be magnified into acts of possession, cultivation, and ownership, such as are within the purview of the colonization law and the doctrines of the Supreme Court touching this subject. If the De Haros were in the exclusive occupancy of this land, why is it not shown that *some one* of the public at large, in the use of the property, met with resistance from them? Why is it not shown that some one person used the land by their permission? *The evidence justifies the assertion that they never took possession of this land.* Beyond all doubt they never lived upon it. They had no home there, neither for themselves nor their laborers or assistants, for they had none, so far as the evidence informs us. A man must have established himself upon a ranch before he can plead such a possession as raises an equity in his favor. The court must see that he is to be removed from the place with which he has identified himself as an owner, to the exclusion of all the world, before the conscience of the court can be touched in his behalf. These two young man, residents of the Mission, had some cattle on the "Potrero;" and so had any and all the other residents of the Mission who choose to put them there.

XIV. How different was the case of Alviso, to which counsel would assimilate this? There the party went upon the land in 1840, cultivated the land, improved the land, and, with his family, resided upon the land, (23 How., 319,) and continued thus to occupy it from 1840 forward; and this, too, after the prefect had promised it to him, and the governor, on giving the right of possession, had *intended* to confer upon him a final title to the property.

XV. The argument from Bidwell's case is easily answered. The governor's language is: "I have resolved to grant him provisionally said land," &c. And the fourth condition reads: "When the land shall be made his property, the respective judge shall lay out the boundaries," &c. Here was a provisional grant of land in anticipation of a final title. The De Haros, when they received their document of permission to occupy, anticipated nothing. The governor exhausted all the power he intended to exercise over the subject.

XVI. The arguments drawn from the cases of the Suisun ranche, and that of the Indian Roberto, are, we think, equally out of place here. If, as in those cases, the De Haros had obtained from the governor a grant in fee, this case would be like those, and would be disposed of accordingly.

XVII. We do not dispute the ability of the De Haros to have obtained a title in full ownership, nor to have clothed themselves with such an equity as would have charged the conscience of our government. The question is not, what could they have done, but what did they do? They might have asked for a tract out of the vacant public domain—land, in the words of the coloni-

zation law—not *private property*, nor *belonging to any corporation or pueblo*, and they could have had it. But they did not do so. The arguments of the claimants would seem to amount to this: That the De Haros, if they had petitioned for the land, could have obtained it. Therefore they should have it now. But this argument would have justified any Californian in demanding confirmation of any given eleven leagues without a scrap of title, for certainly any one of them with cattle, could have land for the mere asking. *So far as concerned a prospective title in fee, en propriedad, in ownership in and to this land, the De Haros were utter strangers to it. Their sole relation to it was that of licensees, not incipient or prospective owners.* And for that reason, no more attention is to be paid to their claims to a patent for it now than should be paid to the claim of any other Californian who should come forward and show in himself the qualities necessary in a candidate for land under the colonization law, but who took no steps according to law to get it.

The weakness of the title, both as to its form and the possession under it, has been completely recognized. (If it had been deemed good by these Californians, they would not have brought forward the spurious papers whose contents soil the records of the court.) The flagitious candor of Gomez, when in open court he proclaimed the forgery of a formal title to this land, will not soon be forgotten. It is almost certain he wrote the document upon which the complainants have been compelled to fall back; and few knew better than himself the little claim that document had to be considered a title to land. Though he well knew its defects, his opinion as to the commission of high crimes in order to cure them is hardly so reliable. The claimants are in

a court of equity. They do not pretend now to have a legal title. They address the conscience of the chancellor. With what favor he should regard a petition once sought to be bolstered up with now baffled perjury and forgery, is submitted without comment.

To recapitulate—

1st. The *informe* of Jimeno recommends a provisional license in lieu of a grant, and the memorandum of record in his own handwriting describes the document the governor issued as a provisional license; and we are to take these as parts of the title, whatever it was.

2d. The title, therefore, is not a grant in fee, nor was it such a grant, gift, or donation as looked to one thereafter, but it was complete in itself—all the governor intended it to be; and, being so consummate and complete, it was a temporary permission to use the land, revocable at pleasure, being neither *jus in re* nor *jus ad rem*.

3d. It was at most but a usufruct, which cannot survive the usufructuary; and as the De Haros died in 1846, before the change of flags, it died with them; and the land was transferred to this nation, vacant and unoccupied.

4th. The document issued was not a provisional grant of land; for the governor, when he made it, did not intend to follow it up by an absolute grant. *Without such intention, coupled with possession,* NO EQUITY CAN ARISE.

5th. The De Haros never took possession of the land. They used it in common with their neighbors, but built

no house upon it, and exercised over it no acts of ownership to the exclusion of any other persons who chose to enjoy it.

6th. The claimants have no title, inchoate or final. Their claim is wholly destitute of equity, and should be rejected.

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The foregoing brief, used on the argument in the court below, is adopted by the counsel of the United States for the argument in the Supreme Court, in connection with this supplemental brief.

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Attorney General.
JOHN A. WILLS,
Special Counsel.

Supreme Court of the United States.

No. 420, December Term, 1866.

DE HAROS' HEIRS

vs.

THE UNITED STATES.

SUPPLEMENTARY BRIEF FOR THE UNITED STATES.

HENRY STANSBERY, *Attorney General.*
JOHN A. WILLS, *Special Counsel for United States.*

Supreme Court of the United States.

No. 420, December T., 1866.

DE HAROS' HEIRS

vs.

THE UNITED STATES.

SUPPLEMENTARY BRIEF FOR THE UNITED STATES.

The Government contends that the claimants have no right to a reversal of the judgment of the District Court, and to a confirmation in this case, for the reasons stated in the following propositions:

I. That the Governor of California, under the laws of Mexico, *could not grant* PUEBLO lands.

II. That, acting upon this view, he did not grant, but *refused* to grant to the De Haros the *pueblo* lands now claimed, and lying within the ascertained limits of the pueblo of San Francisco.

III. That the only interest tendered to them by the Governor was that arising under "a provisional license," or "a provisional grant to occupy the land," rights which, even if accepted by the petitioners, created no interest *in* or title *to* the land, and, therefore, necessarily terminated with their lives.

IV. That it is immaterial in point of law what interest the Governor may be regarded as having *tendered* to the De Haros by the geniune documents now relied upon by claimants as the evidence of their title—whether it be regarded as a "provisional license," as a "provisional grant," or as a "conditional grant;" because, as in point of fact, they never accepted the offer, and never performed its conditions prior to July 7,

1846, they failed to acquire *any inceptive title*, of any kind, to the lands in question.

V. That even if the original petitioners had obtained and accepted a *conditional grant*, terminable by the happening of a condition subsequent, and had performed all the preliminary conditions necessary to vest the title to the land, still that title has expired by its own limitation, viz, by the assignment or demarkation of the ejidos of the pueblo of San Francisco.

VI. That the land covered by this claim is not excepted out of the pueblo lands confirmed to the city of San Francisco in trust for its inhabitants, &c., by the decree of the United States circuit court for California, because at the date of the final decree of said court, viz, May 18, 1865, no proceedings were then pending in any tribunal of the United States for the final confirmation of this claim.

The truth of any one of these propositions will defeat this claim.

We shall content ourselves with a reference to the law and the facts by which each of them is sustained.

I. The Governor of California, under the laws of Mexico, *could not grant pueblo lands.*

The law of 1824, and the regulations of 1828, are the only laws of Mexico on the subject of granting the public lands in the Territories, (excepting those regulating towns and missions,) and the authority of the Governor and other officers is defined by them.

United States *vs.* Vallejo, 1 Black's U. S. R., pp. 541, 546–552.

United States *vs.* Workman, 1 Wallace U. S. R., pp. 761, 762.

Cambuston's case, 20 Howard's U. S. R., pp. 63, 64.

Pueblo lands are expressly excepted from colonization by the second section of the law of 1824, in pursuance of the ancient law and policy of Mexico.

See Dwinelle's Colonial History of San Francisco, edit. of 1866; Addenda, pp. 23–25, Nos. 12 and 14; *Ibid*, p. 9, No. 6; *Ibid*, pp. 50, 51, No. 33.

For analogies on this question—

See New Orleans *vs.* The United States, 10 Peters R., 662–718–737. Lewis *vs.* San Antonio, 7 Texas R., 288–318–321.

The decree of March 20, 1837, is relied upon as conferring authority upon the Governor alone to grant pueblo land. (See Dwinelle; *Ibid*, Addenda, No. 154, p. 314–363.)

But that law confers on him *no original* authority to grant. It merely confers an *appellate* authority, to be exercised *jointly* by the Governor and the Departmental Assembly upon appeals from the action of a subordinate prefect in granting pueblo lands.

If colonization grants have been made or confirmed within the limits of the pueblo of San Francisco, it was done illegally and improvidently, because the boundary of that pueblo had not been previously defined. But all such past cases are protected by the exception in the decree confirming the city title to its pueblo lands.

The question now is whether an *express declaration* of a law of Mexico shall be *enforced*, or be *repealed* by judicial construction. This Court has hitherto declined to express an opinion on this question.

United States *vs.* Ritchie, 17 Howard U. S. R., p. 541.
Singleton vs. Touchard, 2 Black's U. S. R., p. 345.

This Court is now called upon to decide the question, because it is decisive of this case.

II. The Governor, acting on this view of the law, *did not grant, but refused to grant* to the De Haros, in this case, the pueblo lands now claimed and lying within the ascertained limits of the pueblo of San Francisco.

They had asked for a grant in full property. On the report of Jimeno, he refused to make such a grant, but offered them a provisional license to occupy the land. (See Jimeno's Report and the Provisional License, printed Record, pp. 22, 23; for a more correct translation see Shafter, Heydenfeldt & Gould's Brief, p. —; Dwinelle's Col. Hist., Addenda, No. 60, pp. 87, 88.)

The action of the Governor will be more readily understood by reference to the law of Mexico, and to certain well-known facts of local history.

By the decree of the Mexican Congress of August 17, 1833, the missions of California were ordered to be secularized. (Dwinelle's Col. Hist., Addenda, No. 15, p. 26, art. 1.) The Missions were to be converted into pueblos. (See Governor Figueroa's Prov. Rules, dated August 9, 1834, art. 1, 14, 15, 23, § 4; *Ib.*. No. 19, pp. 31–33.)

Law of August 6, 1834, arts. 1 and 2, prescribes the method by which towns and cities can obtain an assignment of their

pueblo lands. (*Ib.*, No. 18, p. 29.) Nevertheless, up to the year 1840, little or no progress had been made by ex-missions, towns, or cities in having their municipal lands defined or assigned to them. (*Ib.*, No. 50, p. 70.)

In the meantime colonization grants were solicited and refused by the Governors of California for lands in the vicinity of the ex-mission of San Francisco, for the reason that they were pueblo lands.

January 2, 1835. The petition of Cornelio Bernal for the grant of the Rancho Las Salinas was refused by Governor Figueroa for that reason; but he gave him, as in this case, a temporary right of occupancy. Subsequently, in 1839, Bernal applied again for a grant of the same land, and upon more favorable reports, he obtained what he had not before, a grant of the land in full property. (*Ib.*, No. 46, pp. 65, 64–65.)

This case is an admirable illustration of the known difference between the rights conferred by a license to occupy, and a grant of the land.

March 14, 1836. Petition of Francisco De Haro, Sr., for a grant of the Rancho San Pedro, refused by the Governor for the same reason. (*Ib.*, No. 21, p. 48.)

November 25, 1839. Petition to Governor for authority to grant town lots at the ex-mission of San Francisco. Authority granted. (*Ib.*, No. 48, p. 68, 69.)

August 16, 1843. Gov. Alvarado, in an order in relation to a petition of De Haro, Sr., for a town lot at the ex-mission of San Francisco, speaks of the "new town of Dolores." (22 Howard's Rep., 295.)

April 8, 1844. Francisco De Haro, Sr., Francisco Guerrero, and Ramon and Francisco De Haro, (the petitioners in this case,) and other residents at the ex-mission, petition Gov. Micheltorena to declare it a pueblo in due form of law. The Governor declined any immediate action. (*Ib.*, No. 71, pp. 102, 103.

April 12, 1844. Francisco De Haro, Sr., in the names of his two sons, Francisco De Haro and Ramon De Haro, then minors, presented the petition in this case for a grant of the Potrero Nuevo, upon which, on the report of Jimeno, Gov. Micheltorena refused to make a grant of the land; but, like Gov. Figueroa, he offered them a provisional license to occupy the land. (*Ib.*, No. 60, pp. 86–88.)

III. The only interest tendered the De Haros by the Govenor was that arising under "a provisional license," or "a provisional grant" to occupy the land; rights, which, even if

accepted by them, created no interest in or title to the land, and therefore necessarily terminated with their lives.

1. Regarded as a "provisional license." What does this mean? Provisional, (Italian, *provisionale;* Spanish, *provisional;* French, *provisionnel;*) means, according to Webster, "provided for the present need, or for the occasion; temporarily established; temporary; as a *provisional* government; a *provisional* treaty." (Webster's Dic., Unabridged.)

"License," from the Latin "*licere*," to be permitted, according to the same authority, means, in this sense: 1. "A grant of *permission;* 2. "The written document by which a *permission* is conferred."

A license creates no interest in lands, and terminates with the life of the licensee. In addition to other authorities cited in the former Brief—

See Jacobs' Law Dic., License.

Washburn on the Law of Easements, &c., p. 5, § 5; *Ib.*, p. 8, § 11.

United States *vs.* Rose, 23 Howard R., p. 272, 273.

United States *vs.* Rose, *Ib.*, Howard R., p. 275–277.

2. Regarded as a "provisional grant."

The very term "provisional," *ex vi termini*, imports that *something more had to be done in order to confer a title to the land.* Without something more than a provisional grant, no title passed.

This was the *practical construction* of the Mexican Government, and was well known by all its citizens.

This fact is illustrated by the case of Bernal, before cited, and by all the various classes of provisional grants which have come before this court for adjudication.

First class—Provisional grants by Vallejo on the northern frontier.

United States *vs.* Ritchie, 17 Howard R., 535.

United States *vs.* Larkin, 18 Howard R., 557.

The grant also made "subject to the measurement of contiguous ranches."

Second class—Provisional grants sought to be perfected by the "Sutter General title." (United States *vs.* Bassett, 21 Howard Rep., 413, 414.)

Petition to Micheltorena, July, 1844. Jimeno reported that the consideration of many petitions of the same nature had been postponed *until the Governor should visit the country of the Sacramento and San Joaquin.* The Governor thereupon made an order that *the petitioner might take possession*, and deferred

further action *until he should visit the country*, and returned the papers to the petitioner. The Sutter General title was offered "as the complement to the other evidence of title." Held, that "it could not perfect any incipient pretension into a vested interest." Campbell, J.

Micheltorena never visited that region of country. The condition subsequent, according to the argument of claimants, never happened. Did the possessory title become absolute? This Court held that it did not.

United States *vs.* Bennitz, 23 Howard R., 260, 262.

A similar case. See arguments of counsel, p. 260, 261.

United States *vs.* Rose, *Ib.* p. 264, 267, 271.
(See arguments of counsel.)

United States *vs.* Murphy, *Ib.*, pp. 476, 477.

United States *vs.* Chana, 24 *Ib.*, p. 131, 132.

United States *vs.* Hensly, 1 Black's U. S. R., 35–37.

All these cases proceed upon and enforce the distinction between a "provisional grant" and "a definitive grant"—holding that the former confers no title to or interest in land.

Third class—Provisional grants generally.

Arguello *vs.* The United States, 18 Howard R., 540–543.

Rodriguez *vs.* The United States, 1 Wallace Rep., pp. 589, 590.

United States *vs.* De Haro's Heirs, 22 Howard R., 294.

This case shows knowledge, by the De Haros, of the necessity for other title than that conferred by a provisional grant, and their action accordingly; and hence the two successive forged grants offered in this case.

But the Garcia case (22 Howard R., p. 282) contains a summary of the whole law on this point, and establishes the principle that a provisional license or permission temporarily to occupy land cannot be held to constitute an equitable title to land, even although the claimant has availed himself of the permission by going into possession and making extensive improvements.

Accordingly, it has been held in subsequent cases, that a mere permissive possession, without a grant of the land, confers no title.

United States *vs.* Chaboya, 2 Black's Rep., pp. 595, 597, 598.

United States *vs.* Peralta, 3 Wallace R., p. 441.

United States *vs.* Serrano, decided at this term.

The only apparent exception to this principle is found in the Alviso case. (23 Howard Rep., 318.)

But, in that case, there was an evident intention to grant the fee, followed by a long-continued and uninterrupted possession of fourteen years by the claimant. It was a "hard case," in which the claimant obtained a decree in the court below, with a view, on the part of the court, *to maintain the existing status.* This Court, in view of the special circumstances of the case, refused to reverse the decree and to *change* the existing status. In this case the claim was rejected, the effect of which is to maintain the existing status. Claimants, on the contrary, seek to reverse the decree below, with a view to change the existing status and to dispossess thousands of people of their homes and of the fruits of their industry for the last ten years, by means of their mere shadow of a title.

Claimants seek to fortify their claim by extracts from Jimeno's Index and the Toma de Razon.

But those documents furnish no independent evidence of the nature or degree of the title conferred. That must be shown by the expediente and the title papers themselves. Those records serve merely to verify the fact, that a *genuine* right of some kind had been issued.

Cambuston case, 20 Howard R., 63.
United States *vs.* Bolton, 23 *Ib.*, 350.
United States *vs.* West's Heirs, 22 *Ib.*, 317.
Peralta *vs.* United States, 3 Wallace R., 440.
This also is the view of Judge Black in his argument in the Ellen E. White case, pp. 12, 13.

But the strongest possible confirmatory evidence of the correctness of the proposition, that the original petitioners acquired no title to the land in controversy by the title papers now relied on as sufficient evidence of title, is furnished by the claimants themselves in the two successive forged grants, which they presented as the evidence of their title to a confirmation. They never had the audacity to set up such a pretence, until, by the detection of those forgeries, the necessity of their position became the mother of this *new* invention.

IV. That it is immaterial, in point of law, what interest the Governor may be regarded as having tendered to the De Haros by the genuine documents now relied upon by claimants as the evidence of their title, whether it be regarded as "a provisional license," as a "provisional grant," or as a "conditional grant;" because, as in point of fact they never accepted the offer, and never performed its conditions prior to

July 7, 1846, they failed to acquire any *inceptive title* of any kind to the land in question.

This is the decisive point in this case, and it turns mainly on a question of fact.

Before the claimants can found any shadow of claim to the land in question, they must show by clear and convincing evidence that the original petitioners, whom under they claim accepted the offer and had the *exclusive* possession of the potrero prior to July 7, 1846. The burden of proof is upon them, and they must establish these facts beyond all reasonable doubt, or their case is lost.

It is incautiously admitted by Judge Hoffman, that the "petitioner or claimants," meaning the original licensees, repaired the old wall, and went into possession of the land and used it for a little more than two years prior to the conquest. (Printed Record, pp. 187, 189.)

This admission is gladly accepted by counsel for claimants, and is the basis of much of their argument.

But the fact is otherwise. The young De Haros never had any exclusive possession of the potrero. If they occupied it at all, it was only in common with all other inhabitants of the mission.

The only evidence tending to prove the contrary state of facts is found in the testimony of the same class of witnesses who swore to the genuineness of both the forged grants. The fact of an exclusive possession was as important as the genuineness of the pretended grants. Hence, both facts are sworn to by members of the same perjured band. "*Falsus in uno, falsus in omnibus.*"

The only witnesses who testified to the occupancy of the young De Haros, prior to 1846, are Wm. A. Richardson, Manuel Castro, Juan Padilla, Gregorio Briones, H. F. Teschmaker, and Mrs. Bernal.

Occupancy prior to 1846.

Wm. A. Richardson swore to the fact of their occupancy in 1844. (Printed Record, pp. 6, 13.) There was a house on the land, &c.

Manuel Castro, to possession in 1845. (*Ib.* p. 45.)

Gregorio Briones, to their possession May, 5, 1845, when juridical possession was given under the forged grants. (*Ib.* pp. 41, 118.)

Juan Padilla, to their possession before May 5, 1845. (*Ib.* p. 53.) His character by Sanchez. (*Ib.* 131.)

H. F. Teschmaker, to the possession from 1842 to 1846.

"*By report*, this place belonged to the *De Haro family*." (*Ib.* p. 29.)

Carmen S. Bernal, potrero occupied by these licensees with cattle and horses ten or eleven years before 1854; that is, in 1843 or 1844. (*Ib.* p. 35.) They built a small wooden house about the same time. (*Ib.* pp. 37, 38.)

OCCUPANCY AFTER 1846.

Julius K. Rose and S. R. Throckmorton testify to the occupancy of the De Haro family *after* 1846.

Julius K. Rose swears to occupancy from 1849 and 1850. (*Ib.* pp. 13, 112, 113.)

Bartlett was alcalde from July, 1846, to February, 1847. (Dwinelle's Col. Hist., addenda, p. 111.)

Throckmorton swears to occupancy from 1852, (Record, p. 62.) "Tent house" in 1852.

The testimony of these last witnesses is unimportant in this connection, and is only given to present a view of the whole evidence of claimants on the subject of possession.

The testimony of the witnesses who swore to their occupancy prior to 1846—thus compromised by their perjuries in support of the forged grants—cannot certainly be regarded as *satisfactory* evidence of a fact so important.

But apart from the discredit of these witnesses, there is direct and positive negative evidence to the contrary, by unimpeached witnesses, who swear that the young De Haros never had any exclusive possession of the potrero prior to their death in 1846; that it was a common, open to all the world, where the cattle of everybody pastured. See testimony of—

Francisco Sanchez, an uncle, (Record, p. 15, 16.)

Jose De La Cruz Sanchez, an uncle, (*Ib.*, p. 130, 131.)

Torribio San Feran, (*Ib.*, p. 89, 90, 91.)

Vicente Miramontes, alcalde in 1845, (*Ib.*, p. 105.)

Tiburcio Vasquez, *adm'r* of mission till 1846, (*Ib.*, 108, 109.)

Miguel Noe—An adjoining ranchero, (*Ib.*, p. 162, 163.)

Alfred A. Green—No occupation from 1847 to 1849, stone wall broken down.

Julius K. Rose—Put up stone wall in 1850, (*Ib.*, p. 11, 12.)

The following witnesses swear that there was no house on the potrero, and no cultivation of it till after 1846, contrary to the testimony of Richardson, Mrs. Bernal, and others.

Miramontes, (*Ib.*, p. 105; Sanchez, p. 15, 131.)

Tiburcio Vasquez, (*Ib.*, 108, 109.)

No house in 1847—David Waling, (*Ib.*, p. 92.) Alfred A. Green, (*Ib.*, p. 102.)

Nor in 1848—Rideont, (*Ib.*, 79, 80.)
Nor in 1849—Isaac N. Thorne, (*Ib.*, 94.) Fred. P. Tracy, (*Ib.*, 77.)
Nor in 1849 or 1850—John H. Davis, p. 83.
House built in 1850—Stuart (*Ib.*, p. 70, 71, 72.)
No house from 1842 to 1850—Miguel Noe, (*Ib.*, p. 162.)
"Tent house" in 1852—Throckmorton, (*Ib.*, p. 62.)

The distinction between occupancy by the *young De Haros prior* to July 7, 1846, and occupancy by De Haro, Senior, and his family *before or after that date*, is as important in point of fact as it is decisive in its legal consequences.

1. The failure of the young De Haros to accept the offer of the Governor, or to perform the conditions of the offer prior to July 7, 1846, is conclusive legal evidence of an abandonment of all claim to the land.

This has been repeatedly decided by this Court.

Fuentes case, 22 Howard's Rep., p. 460.
Noe's case, 23 *Ib.*, p. 315, 317.
United States *vs.* Bolton, (Santellan case) *Ib.*, p. 353.
United States *vs.* Osio (Angel Island case) *Ib.*, p. 276–7.

2. Any possession or occupancy of the land, taken or acquired by them, or by DeHaro, Senior, as their heir, or by his surviving children, as his heirs, *after* July 7, 1846, is unavailing. It must be shown to have existed *before* that date, or this claim fails at its root.

The grant must be made, the possession must be taken, and the conditions which create the equity which entitles a claimant to confirmation must be performed, *before* the change of sovereignty in California.

Fremont's case, 17 Howard Rep., p. 563.
Sutherland's case, 19 *Ib.*, p. 363–4.
Fuentes' case, 22 *Ib.*, p. 458.
Pico's case, 23 *Ib.*, p. 321, 325, 326.
Wilson's case, 1 Black R., p. 269.
Romero's case, 1 Wallace R., p. 738, 743, 744.
Noe's case, 23 Howard R., p. 315, 317.

The rule is the same both in regard to *grantors* and *grantees*. If Mexican officials cannot make grants or create rights after that date, grantees, for the same reason, cannot *begin* to perform the conditions of prior grants after that date.

3. A mixed occupancy by the young De Haros, or by those claiming under them, *in common* with other inhabitants of the mission, whether before or after July 7, 1846, creates no equity in behalf of claimants.

United States *vs.* Galbraith, 2 Black's Rep., 406–7.
United States *vs.* Chaboya, *Ib.*, 595, 597, 598.

V. That even if the original petitioners had obtained and accepted a *conditional grant*, terminable by the happening of a condition subsequent, and had performed all the preliminary conditions necessary to vest the title to the land, still that title has expired by its own limitation, viz, by the assignment or demarkation of the ejidos of the pueblo of San Francisco.

An attempt is made by counsel for claimants to evade the fatal consequence of this conclusive fact by endeavoring to make a distinction between the ejidos of "the establishment of San Francisco," meaning the *mission* of that name, and "the pueblo of San Francisco," meaning the municipal organization.

But this is a mere subterfuge.

A *mission*, as such, had no right to ejidos. *Ex vi termini*, they belong *to towns and cities only*. (See Escriche's Dic., "Ejido;" Salva's New Spanish Dic., "Ejido;" "Terra inculta *oppido* proxima." Dwinelle's Col. Hist., § 14, pp. 10–11.) It is also a *generic term*, including *all the municipal lands* to which a pueblo was entitled. (*Ib.*, final note p. 106.) See also Judge Field's opinion in the city case, in which he uses the term in the same sense. He quotes the language of Jimeno, in which he uses it in this generic sense, in relation to the pueblo of Branciforte, in his report to Governor Micheltorena, dated February 8, 1844. (*Ib.* Addenda, p. 227.)

It is again used by Jimeno in the same sense, in his report in this case, made but a few months afterwards—April 29, 1844. (Printed Record, p. 22, 23.)

Besides, the mission of San Francisco, as such, had ceased to exist. It is called an "ex-mission" in the petition of the petitioners in this case, (Record, p. 21,) and it is treated as an extinguished mission from beginning to end. The ejidos, therefore, which Jimeno and Micheltorena had in view were not the ejidos of a mission, which is an absurdity in terms.

The mission, as such, had ceased to exist, and, under the policy of secularization, had been converted, or was to be converted, into a pueblo. The grant solicited was refused, because of the pueblo *created, or to be created in that locality;* and any rights tendered to the petitioners were made subordinate to the rights of that municipality.

It is immaterial, therefore, whether the land was to be assigned to a pueblo, to be called the pueblo of Dolores, or the

pueblo of San Francisco. From the very nature of the locality—the head of a narrow peninsula—two pueblos, each with a right to four square leagues of land, could not exist or be located on the peninsula. The assignment of four leagues of land to one pueblo, by whatever name, precluded the possibility of assigning the like quantity to another.

The plan of Pitic also forbade the creation of pueblos within five leagues of each other, (Dwinelle's Col. Hist.; addenda No. 7, p. 11, § 2,) so that two could not co-exist there.

The assignment of the ejidos of the city of San Francisco, by the decree of the circuit court of the United States in the case of The United States *vs.* The City of San Francisco, No. 287, Dec. T., 1866, of this Court, includes the potrero in question, as will be seen by the map of the locality.

Printed Record, p. 416–417.

Dwinelle's Col. His.; addenda, p.

The ejidos of the only municipality of that locality have, therefore, been judicially assessed, and the lands in question fall within their limits. Any rights to the land, terminating with the happening of that event, must therefore cease.

VI. That the land covered by this claim is not excepted out of the pueblo lands confirmed to the city of San Francisco in trust for its inhabitants, &c., by the decree of the United States circuit court for California, because at the date of the final decree of said court, viz, May 18, 1865, no proceedings were then pending in any tribunal of the United States for the final confirmation of this claim.

The decree of the circuit court, in fixing the boundaries of the pueblo lands of the city of San Francisco, confirms to that city all the lands north of an east and west line run across the peninsula, cutting off four square leagues to the north of it, with certain enumerated exceptions, "namely, such parcels of land as have heretofore been reserved or dedicated to public uses by the United States; and also such parcels of land as *have been*, by grants from lawful authority, *vested in private proprietorship and have been finally confirmed* to the parties claiming under said grants, by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming thereunder, by said tribunals, *in proceedings now pending therein for that purpose.*" United States *vs.* City of San Francisco, No. 287, Dec. T., 1866, of this Court. Printed Record, p. 416–417.

That decree is dated May 18, 1865, and fixes the date *when* proceedings must be pending in the tribunals for a final confirmation, so as to embrace the third exception. At that date *no proceedings were pending in this case for a final confirmation of this claim*, either in the district court of the United States or in this Court.

This claim had been rejected by the district court, February 19, 1862. (Printed Record, p. 190.) No appeal was actually filed in this Court in this case until December 4, 1865, as appears by the record. But that appeal was dismissed, without prejudice, for irregularity, at the instance of claimants, April 3, 1866.

The present appeal was allowed by the court below, October 22, 1866, (Printed Record, pp. 190, 191,) and was filed in this Court, January 12, 1867.

As no appeal had been prosecuted by claimants at the date of the decree in the city case, viz, May 18, 1865, this claim does not fall within the third exception, and the city title has now become paramount.

As the city title *antedates* this claim, and this claim is not excepted out of the decree in favor of the city, holding in trust for its inhabitants, the question now is, whether that decree, which *protects the existing status* of the inhabitants of the potrero, so far as their rights of property have been recognized by the city, shall be nullified by the establishment of this claim as paramount to the rights of the pueblo, when in the beginning any privilege granted to the petitioners was intended to be in strict subordination to those rights.

The effect of the decree in the city case was *to quiet titles within the limits of the city*. Both of the acts of Congress—of July 1, 1864, entitled "An act to expedite the settlement of titles to lands in the State of California," (Statutes at Large for 1863–4, pp. 332–'3, sections 4 and 5,) and the act of March 8, 1866, entitled "*An act to quiet the title to certain lands within the corporate limits of the city of San Francisco*," (Statutes at Large for 1865, 1866, p. 4,) by which the United States surrendered its rights, and confirmed the decree of the circuit court establishing the rights of the pueblo—were designed to accomplish that end.

Shall that favorite public policy be defeated, *without the strongest legal necessity?*

HENRY STANBERY,
Attorney General.
JOHN A. WILLS,
Special Counsel for the United States.

In the Supreme Court of the United States.

December Term, 1862. No. 430.

DE HARO, et al.,

VERSUS

THE UNITED STATES.

J. M. CARLISLE,

COUNSEL FOR THE CITY OF SAN FRANCISCO.

Supreme Court of the United States.

Dec. T., 1866, No. 420.

DE HARO ET AL.

vs.

THE UNITED STATES.

MR. CARLISLE'S *notes in aid of so much of his oral argument as may relate to the construction and effect of the Mexican documents relied on by the claimants.*

I. The "informe" or report of Jimeno. Record, pp. 18–19.

Exmo. Sñr. GOBERNADOR:

La Mision de San Francisco ya no tiene bienes ningunos, y por consiguiente, el potrero que se pretende, esta baldio, como lo acreditan los solicitantes con un informe del juez respectivo. Y como a dicho establecimiento debe señalarsele sus egidos, pienso que *entretanto* pueden ocupar el terreno los interesados, por una *licencia provisional*, que V. Ex. digne darles, por no perjudicar a la comunidad, ni particular alguno. La disposicion de V. E. será la mas acertada.

MONTEREY, *Abril* 29, *de* 1844.

MANUEL JIMENO.

Conforme:

MONTEREY, 30 *de Abril, de* 1844.

MICHELTORENA.

Translation of the Report of Jimeno, and of the Endorsement by Micheltorena.

MOST EXCELLENT SENOR, GOVERNOR: The mission of San Francisco has no longer any property, and consequently the potrero which is petitioned for is vacant, as the petitioners show by a report of the proper judge, and as its *egidos* (com-

mon or pueblo lands) are to be assigned to the said establishment, I think that in *the mean time* the parties [*los interesados*] may occupy thel and by a *provisional license* which your Excellency may be pleased to give them, as it will not prejudice the community or any individual. Your Excellency's order will be the most appropriate.

MONTEREY, *April* 29, 1844. MANUEL JIMENO.

Approved:

MONTEREY, *April* 30, 1844.

MICHELTORENA.

This *informe* or official report of Jimeno, having been thus approved and adopted by Micheltorena, without qualification, it is of the first importance fully and accurately to ascertain its meaning.

He begins by stating that the mission of San Francisco, (called by the petitioners the ex-mission,) has no longer any property. It had been secularized. But there remained upon the locality, the settlement of which it had been the nucleus. It was an incipient pueblo; and it is stated upon the brief for the claimants, that at this very time there was pending before the Governor a petition for its recognition as such. (Mr. Stewart's Brief, page 80.)

He therefore next adverts to this fact as a conclusive objection to any grant of the land. But the petitioners having stated their pressing need for a place to pasture the cattle which had fallen to them in the right of their deceased mother, or in distribution of her estate, and which they were obliged then to remove from the Sanchez rancho, Jimeno proceeds to report it, as his opinion, that they might occupy the land temporarily—"*entretanto*"—in the meantime, by a provisional license—"*una licencia provisional*"—as *that* would not prejudice the community or any individual.

The word "*licencia*" is thus defined by the Spanish Academy in their dictionary:

Licencia—Facultad, ó permiso, para hacer alguna cosa, (*libertas* and *facultas.*) Translated—Faculty, or permission to do anything, (*libertas* and *facultas.*)

The word *provisional* is thus defined by the Academy:

Provisional—Lo que se dispone ó manda interinamente. *Ad tempus constitutus.* Translated—that which is disposed or ordered temporarily. *Ad tempus constitutus.*

It is indeed precisely equivalent to the English word *provisional*, which Johnson defines as follows: "*Temporarily established; provided for present need.*"

This, though the language of Jimeno, we have seen was formally "approved" and adopted by Micheltorena on the 30th of April, 1844; and thereupon Jimeno proceeds to draw up and extend the corresponding order of the Governor, as follows:

II. *The order or decree of the Governor, following his approval of the report, and extended on the same day by Jimeno.*

MONTEREY, 30 *de Abril, de* 1844.

Vista la peticion con que da principio este expediente los informes que preseden con todo lo demas que se tubo presente y ver covino de conformidad con las leyes y reglamentos de la materia *declaro* a Francisco y Ramon Haro AGRACIADOS *en que* OCUPEN PROVICIONALMENTE el terreno que nombran potrero de San Francisco en estencion de medio sitio de ganado mayor, siendo sus linderos los esteros de la boca del potrero y las lomerias que lo circunde *Librese el correspondiente* DESPACHO, *tomese razon*, y dirijase una comunicacion al encargo de dicho establecimiento. El Exmo. Snr. Governador asi lo mando decreto y firmo. Doy fe.

Translation.

MONTEREY, *April* 30, 1844.

Having considered the petition with which this Expediente begins, the aforegoing reports, &c.,

I declare Francisco and Ramon Haro gratified, [*agraciados*—the subjects of grace or favor,] *in that they may occupy provisionally* the land which they call the potrero of San Francisco to the extent of a half league, its boundaries being the estuaries of the mouth of the potrero and the range of hills which surrounds it. Let the proper order [*despacho*] be delivered, let it be registered, and let a communication be directed to the person in charge of said establishment.

His Excellency, the Governor, thus ordered, decreed, and signed. I certify.

It will be observed how closely this act or entry conforms to the report and approval which precede it.

But attention should be particularly directed to the language used with respect to the document which is to be delivered to the petitioners. It is not "*Librese el correspondiente titulo*," though that word "*titulo*" is *nomen generalissimum*," but "*Librese el correspondiente* DESPACHO;" "let the corresponding order or despatch be delivered."

III.

The "*correspondiente despacho*" delivered to the parties, as directed by the aforegoing decree, is as follows:

"Manl. Micheltorena, general de brigada del ejercito Mexicano ayudante gral. de la plana mayor del mismo, comandante general, gobernador e inspector del departamento de Californias:

"Por cuanto Francisco y Ramon Haro, han pretendido la consecion del potrero, que se nombre de San Francisco desde la boca de los esteros, con la lomeria que lo circunda y habiendose practicado las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos de la materia, *he venido* en uso de las facultades que me son conferidas a nombre de la nacion Mejicana, EN PERMETIRLES LA OCCUPACION del potrero mencionado, *sujetandose* a la medicion que se haga de los ejidos de estab lecimiento, de San Francisco y a las condiciones siguientes.

"1. NO PODRAN POR NINGUN TITULO VENDERLO NI ENAGENARLO *sin perjudicar algunos bienes que tubiere el establecimiento de San Francisco.*

2*a*. No impediran las trevecias caminos y servidumbres, destinandolo para el cultivo *y bienes que intentan introducir*, pero dentro de un año a lo mas estara ocupado.

3. El terreno *de que se hace mencion* es de medio setio de ganado mayor, y si contravinieren a estas condiciones *perdera su derecho* a esta *consecion provisional que se entrega*, los interesados *para su resguardo* y demas fines. Dado en Monterey, a primero de Mayo de mil ocho cientos cuarenta y cuatro.

MANL. MICHELTORENA.

MANL. JIMENO, *Secretario.*

Es copia de la original que se entrega a los interesador.

MANL. JIMENO.

Note.—Upon the original delivered to the parties was the following endorsement by Jimeno. (Rec. p. 28.)

Queda *tomada razon* de esta LICENCIA PROVISIONAL en el libro respectiver á fo. 8. JIMENO.

Translation.—This PROVISIONAL LICENSE has been registered in the proper book at folio 8. JIMENO.

A translation of the above "despacho," is found page 24 of the Record. The material parts of the paper are these:

"I have determined, in virtue of the power vested in me by

the Mexican nation, to PERMIT THEM, (the De Haros,) TO OCCUPY the before-mentioned pasture-ground, subjecting (confining) themselves to the limits that may be prescribed for the egidos of the establishment of San Francisco, and to the following conditions:

1*a*. They shall have no power (*no podran*) on any pretext (*por ningun titulo*) to sell it or alien it."

The words immediately following this absolute prohibition of any sale or alienation are insensible and unintelligible, unless the word *sin* (without) be erroneously written for *ni*, (nor,) as seems to be the fact. "*But* it should be injurious, &c.," is unintelligible, especially when taken with the words "algunos bienes," (any goods or *bona*) which the establishment of San Francisco, "*tubiere*," may have, &c. But it is perfectly sensible if the word be *ni* instead of *sin*. Thus:

"They shall have no power, upon any pretext, to sell or alien it, *nor* to prejudice [ni perjudicar] any property [bienes] which the establishment *may* have, &c.

"*Algunos bienes*. This word bienes is used in the second condition of the same paper, in reference to the cattle "which they intend to introduce;" "*bienes que intentan introducir;*" and without doubt it refers, in the first condition, to any cattle which the commoners of the mission establishment, or settlement, *may have* on the land, which the occupation permitted to the petitioners was not to interfere with. The words of denial of any right to sell or alien even the right of occupation of the land, are so explicit and absolute as to make any further provision on that subject superfluous and absurd. But as the grant of the land had been refused because of the unascertained *egidos*, and the permissive occupation was expressly made subject to this paramount claim, it was pertinent and natural to add a provision that even this occupancy should not be used to the prejudice of the cattle or other property of the nascent pueblo which might be found on the land.

The provision that this matter should be communicated to the person in charge of the establishment or settlement accords with this interpretation, and can hardly be otherwise explained.

The prohibition of sale or alienation refers to the right of occupation, and not to the proprietory right in the lands; for no such right had been granted, but only a permission to occupy. "*He venido en uso, &c., en permetirles la ocupacion del potrero menciona mencionado*," "I have concluded to permit them to occupy the said (mentioned) potrero;" not "en concederles el terreno nombrado," &c.

It would seem to be very difficult, if not impossible, to resist

the argument as to the legal intent of these documents, founded upon the use of language so peculiarly appropriate to confer a mere right of occupancy as distinguished from an estate in the land, either absolute or conditional. But the claimants themselves have furnished to this Court a singular proof, by ocular demonstration, that this choice of language was not accidental or insignificant, but intentional and deliberate. In the photographic album which they have been at the pains and expense of preparing as an exhibit with their brief, at page (8) eight, is the photographic copy of this provisional license—or grant, as they call it—of the 1st of May, 1844, in the handwriting of Jimeno, and, as the same remains on file in the archives. An inspection of this important paper plainly shows that words appropriate to the grant of land upon condition, were inadvertently written by that officer in drawing up this instrument, but were by him immediately erased and others substituted of a different import. The learned district judge, in his opinion at page 168 of the record, forcibly comments upon this significant fact as follows:

"The language of Jimeno indicates, with entire precision, the nature of the right intended to be conceded. It speaks of it not as a provisional grant, but a 'provisional license' to occupy the land.

"In the document issued by the Governor he declares that 'he has determined to permit them to occupy the land;' and in the third condition the usual phrase, which declares that the party shall lose his right to the land (*al terreno*) in case he violates the conditions, is altered to, 'he shall lose his right to this provisional concession.'

"That this change of phraseology was not accidental is apparent on examination of the copy of the permit retained in the archives. This document is in the handwriting of Jimeno. In writing the last condition he had evidently pursued the usual form, and written, '*perdera su derecho al terreno y sera*,' etc., but, recollecting that the instrument was not a grant, and conferred no right 'to the land,' he has erased those words and substituted the phrase above quoted, '*perdera su derecho a esta concesion provisional*,' etc."

The claimants themselves, by their photographic album, have enabled the judges of this Court to see with their own eyes this fact, so utterly irreconcilable with their pretentions.

And if possible, to make the demonstration more complete, they have given us, at page 16 of the same album, a photographic copy of the conclusion of a genuine grant of land by Micheltorena, countersigned by Jimeno, in which the condition

which Jimeno began to write in this provisional license, but erased, appears at full length, as follows:

"*Perderan su derecho al terreno y sera denunciable por otros,*" —*they shall lose their right to the lands, and it shall be denounceble by others.*

Contrast this language with that used in the present case, WHICH is as follows: "*they shall lose their right to this provisional concession, which is delivered to them for their protection and other ends.*"

What is it which they shall lose? The land? Clearly not. The word land had been stricken from the instrument, because the land was not given to them, so that it *could not be* lost or forfeited. What they are to lose is that which is there "*delivered to them for their protection,*" etc., to wit, the provisional concession, the "*despacho,*" the document then delivered to them which, upon breach of the specified conditions, could no longer be held or lawfully exhibited by them for their protection, or other ends whatsoever.

Against this formidable array the claimants have nothing to appeal to except the language of the "*toma de razon,*" the entry in "Jimeno's index" and the use of the word "*concesion*" (esta concesion provisional) in the instrument of the 1st of May.

These, as will now be shown, are nothing to their purpose, but are entirely consistent with the mere permissive occupancy of the land.

1st. As to the "*toma de razon.*

We have Jimeno's contemporaneous and official construction of it. Upon the copy of the instrument delivered to the parties he endorsed, with his own hand, the necessary certificate that this "*toma de razon*" had been made. The claimants produce the instrument with that certificate upon it as follows, (Rec'd, p. 25:) "*A note of this provisional license is made in the respective book at page* 8." Jimeno. It was of this provisional license alone that the "*toma de razon*" was authorized and directed; there was no other instrument of which there could be any "*toma de razon.*" If, therefore, this instrument had been miscalled or misdescribed in the short note or "*toma de razon,*" its true nature and legal effect could not be affected thereby. But there is no such misnomer or misdescription. The whole entry is given in the Photographic Album at page 10, and is as follows:

D'n Franc'o y Ramon Haro en 1o de Mayo. Se lesdio *titulo* del terreno nombrado el potrero en estencion de medio sitio de ganado mayor.

What instrument is here referred to by the word "*titulo?*" Plainly that of the 1st of May only. Was it a proper and technical description of that instrument? Let Escriche answer:

Titulo.

The cause in virtue of which we prossess anything, and the instrument by which our right is accredited. * * * * Title, (*el titulo,*) considered as the cause in virtue of which we prossess anything, is or is not translative of property, (*dominio.*) Title translative of property is that which is made in perpetuity and in virtue of which the property of the thing is transferred by means of its delivery, or tradition made by the owner, who has power to alien his property; as sale, donation, &c., &c. Title translative of property does not produce its effect except as a consequence of the delivery of the thing. *Quia non pactionibus, &c.*

Title, (*titulo,*) not translative of property, (dominio,) is that which is not made (done) in perpetuity, and which is not capable of transferring the property of a thing to the person of the possessor, as pledge, loan, deposit, letting, (hiring,) and other like cases. The delivery made in consequence of such cause does not give a right to the possessor to *prescribe* the thing, because *this title* (*titulo*) only transfers the natural possession, and not the civil possession, which is absolutely necessary for prescription. Hence it is that every title not translative of property is vicious, so far as respects prescription, inasmuch as it announces and accredits that the thing which is treated of belongs to another person distinct from the possessor. And in this sense we are accustomed to say: "Satius non habere titulum quam habere vitiosum." Wherefore it is better to follow the advice which says: "*Satius non ostendere titulum quam vitiosum exhibere.*"—*Escriche Verb. Titulo.*

Titulo (the original Spanish.) La causa en cuya virtud poseemos alguna cosa; y el instrumento con que se acredita nuestro derecho, &c., &c. * * * * * * El titulo considerado como la causa en cuya vistud poseemos alguna cosa, *es, ó no translativo de dominio.*

Titulo translativo de dominio, es aquel que se hace á perpetuidad, y en cuya vitud se trasfiere la propiedad de la cosa, mediante su entrega, ó tradicion hecha por el dueño que tenga facultad para enagenar sus bienes; como, la venta, donacion, dote, permuta, y otros.

El titulo translativo de domini no produce su efecto sini á consecuencia de la entrega de la cosa; *quia non pactionibus,* &c.

* * * * * * * * * * *

Titulo no translativo de dominio, es el que no se hace a perpetuidad, y que no es capaz de transferir la propiedad de una cosa enla persona del poseedor, como la prenda, el comodato, el deposito, el arrendamiento, y otros semejantes. La tradicion hecha en consecuencia de tal causa, no da derecho al poseedor, para prescribir la cosa, porque este titulo solamente trasfiere la posesion natural, y no la civil, que es absolutamente necesaria para la prescripcion. De aqui es que todo titulo no traslativo de dominio, es vicioso por lo que respecta a la prescripcion en cuanto anuncia y acredita que la cosa de que se trata pertenece á otra persona distinta del poseedor; y en este sentido suele decirse: "*Satias est non habere titulum, quam habere vitiosum,*" por lo cual vale mas seguir el consejo que dice, "*Satius non ostendere titulum quam vitiosum exhibere.—Escriche, Verb. Titulo.*

This authority shows, and indeed it is common sense and common learning, that the word *title* ("*titulo*) is not at all descriptive or indicative of the measure of the right, interest, or estate of the party. But it further shows that there is a class of titles ("*titulos*") known to the Spanish law and technically defined as "*no traslativos de dominio*"—not translative of dominion or property. The use of the word *titulo* as "*nomen generalissimum,*" in this short note of reference to the *expediente*, remaining in the same archives, was therefore strictly and technically correct.

2. So the use of the word "*concesion,*" to describe that which the same Jimeno in the same "*expediente*" calls "*licencia,*" was in like manner consistent and technically correct. Escriche defines "*concession*" as follows:

Concesion.

Todo lo que se otorga por gracia ó merced, como los privilegios concedidos por el principe. Vease *Privilegio.—Escriche Verb. Concesion.*

Translation.

Concession: *Whatsoever* is granted as favor or reward; as the privileges granted by the prince. (See privilege.)

3. The memorandum in Jimeno's index is, if possible, still more insignificant. The photographic album at page 11 exhibits a page from that book, which, although an authentic and generally reliable compilation, is not a public record, but merely a convenient and "useful private writing." It contains a single line applicable to this claim, to wit, the name of the

place, the name of the claimants, the word "*concedido*," abreviated, and the number 360, assigned to it in Jimeno's numerical order. It can at most be regarded as a reference, calling attention to the expediente in the archives, from which the extent and nature of the concession could alone be ascertained.

The whole documentary and record evidence comes back to, and is entirely consistent with, the language of the *informe* of Jimeno, approved by Micheltorena, which declared that the only thing grantable to the petitioners in the premises was a provisional or temporary license of occupation, at the will of the proprietor of the land. This right or title is known to the Spanish law by the term "*precario*," which is defined as follows:

Precario—En su mas estrecha acepcion, es un prestamo, revocable a voluntad del que le ha hecho; y se toma tambien por todo lo que se posee como en prestamo y a voluntad de su dueño; y asi se llama *precaria*, una posesion, para dar a entender que la tal posesion no es mas que un efecto de la tolerancia del proprietario, sin que pueda dar derecho alguno al poseedor. El que tiene una cosa *precariamente*, debe restituirla al dueño siempre que por este le fuere pedida; y por eso decia con razon Decio, *Breve et fragile beneficium est precarium, cum id quoque restitui debeat, vel confestim vel cuandocumque, debuerit concedenti.—Escriche, Verb. Precario.*

Translation—"*Precario*," in its strictest acceptation, is a loan revocable at the will of him who has made it, and is also taken for whatsoever is possessed as upon loan and at the will of its owner; and thus a possession is called *precaria*, to give it to be understood that such possession is no more than an effect of the sufferance of the proprietor without its giving any right to the possessor. He who holds a thing "*precariamente*" must restore it to the owner whensoever it is demanded by him; and hence it is well said by Decio, "Breve et fragile beneficium est precarium," &c., &c.

* * * * *

Some apology seems necessary for presenting these detached notes upon a single branch of the case, after the able and comprehensive briefs and arguments which have been already filed by my colleagues. My only object has been to lay before the Court, in convenient and distinct form, the materials for a careful and deliberate criticism, philological as well as legal, of the Mexican record, upon which, after all, the case of the claimants must depend for any hope of success.

These materials are so simple and elementary that any ordinary scholar, not pretending to a mastery of the Spanish language, can verify them, and determine their true value.

Such a criticism, it is believed, must surely lead the mind to two conclusions, to wit:

I. That, as against the Mexican Government, upon this Mexican record, Francisco and Ramon de Haro, and their heirs, had no title to the land, absolute or conditional, perfect or inchoate, which the United States, by the law of nations, the treaty of cession, or the act of Congress under which this Court takes jurisdiction, are bound to confirm.

II. That the so-called paper title of the claimants cannot be made the foundation of, but is repugnant and fatal to, any equity, by way of prescription or otherwise, against Mexico or its successor, the United States, to sever this land from the public domain, if it were not already so severed by the final decree in the case of San Francisco *vs.* The United States, to which, as assigning the *egidos*, the construction which the claimants themselves put upon the document they style a grant expressly subjects them.

The correctness of these conclusions has received at the hands of the claimants two fearful corroborations, in the successive forgeries, dated the 24th of May and the 18th of September, 1844, which though they should be charitably acquitted of any guilty knowledge of the fabrications and perjuries which they now denounce and disclaim, must ever remain as conclusive proof of the deliberate judgment of their counsel and themselves, that the *true* record gave them no title to the land.

J. M. CARLISLE,
Of Counsel for the City of San Francisco.

Supreme Court of the United States.

December Term, 1866.

No. 420.

JOSEFA DE HARO, ET AL., Appellants,

VERSUS

THE UNITED STATES, Appellee.

ARGUMENT.

Harvey S. Brown,
FOR APPELLEE.

McGill & Witthaow, Printers & Stereotypers, Washington, D.C.

In the Supreme Court of the United States.

No. 420.

JOSEFA DE HARO, ET AL., APPELLANTS,

vs.

THE UNITED STATES, APPELLEE.

ARGUMENT BY HARVEY S. BROWN FOR APPELLEE.

Before proceeding to the argument on the merits, we submit that this court has not jurisdiction of the case, and that it should be dismissed because no appeal has been taken.

The 10th section of 3d of March, 1851, provides: "That the *district court* shall proceed to render judgment upon the pleadings, &c., and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States *on such security for costs* in the district and Supreme Court, in case the judgment of the district court shall be affirmed, *as the said Court shall prescribe*, and if the *Court* shall be satisfied that the party desiring to appeal is *unable* to give such security the appeal may be allowed without security." (U. S. Statutes, 9th vol., p. 633.)

This is a special statute and confers a special jurisdiction, and when it prescribes how or when a particular thing must be done it must be strictly followed. This point has been passed upon in the Yturbidie case, 22 Howard, 290. This statute imposes a duty not directory but mandatory upon *the court as a court*, and whenever any such duty is imposed in such special case it *must appear* that it has been performed. The order allowing the appeal should either state the amount of security required, and the transcript should show that it had been given, or the order allowing the appeal should show that *the court was satisfied*, by proof or otherwise, that the party was unable to give security, &c., for when the *court is to be satisfied* it must be judicially satisfied, and must have a basis for being so satisfied, all of which, in a special case, must appear of record.

The giving of the security, or the judicial determination that the party is unable to give it, is a *condition precedent* to the appeal. True, the order may be made allowing the appeal on filing

NOTE.—See marginal pages where references are made to Transcript.

security, in any given sum, the same as an injunction may be allowed or a receiver appointed on giving bonds. No one would contend that the injunction would be binding or that the receiver could assume the duties of his place until after the filing of the bond. In case of the allowance of the appeal, upon filing bonds under this statute, the appellant, were it not for other rules of this court, might file his bond at any time within five years from the time of the rendition of the judgment, and procure and forward his transcript and file the same in this court, but after that time his right must forever cease. It is not to be presumed that bonds have been given or that the *court* was satisfied, for the reason that under this statute nothing is to be presumed, but everything must appear.

Authorities may be cited to show that under the general law concerning appeals and writs of error it has been held that the court below may take the bond prescribed by statute even after the five years, and that this Court may direct that bonds be taken, &c., very different, however, is that statute from this. The provision is: "And every justice or judge signing a citation on any writ of error, as aforesaid, shall take good and sufficient security that the plaintiff in error will prosecute his writ to effect," &c. (2 U. S. Statutes, p. 404.)

This is not the *act or judicial determination* of a court, but a mere chamber duty imposed on the justice or judge. He is not required to sign the citation *on plaintiff in error giving such* security—there is no condition precedent; there is no time fixed when such security shall be given; it is not mandatory but purely directory. It is a simple duty of the justice, &c., and whether he do his duty or not in taking the security it does not affect the appeal, so far as the jurisdiction of the court is concerned. But, according to our reading of the statute, in cases like this the appeal can only be allowed *on condition* that security is given, which the Court must determine, unless the *Court* is satisfied, &c. Until it affirmatively appears that the Court has been so satisfied, or that such security has been given, there is no appeal, and it is now too late to give it, for more than five years have elapsed since the decree of the District Court.

Even under the general law, appeals have been dismissed where it affirmatively appeared that no bond had been filed. I take it that such dismissal was made for irregularity and not for want of jurisdiction. But the point here raised is purely *jurisdictional*. If the doctrine is sound that jurisdiction is not to be presumed in special cases under special statutes, but that it must affirmatively appear from the record that the statute has been strictly followed, or if the determining of the amount and the giving of the security, &c., is a *condition precedent*, then it seems that this case ought here to end.

In the case of the United States *vs.* Curry *et al.*, 6 Howard, 106, involving the title to a large body of land in Louisiana, the court dismissed the appeal. The Court says:

"It has been said that this objection is of a mere technicality, and may be regarded rather as a matter of form than of substance. But this Court does not feel authorized to treat the directions of an act of Congress as itmight treat a technical difficulty growing out of ancient rules of the common law. The power to pass and determine a case like this is conferred upon the court by acts of Congress, and the same authority which gives the jurisdiction has pointed out the manner in which the case shall be brought before us, and we have no power to dispense with any of these provisions nor to change or modify them. And if the mode prescribed for removing cases by writ of error or appeal be too strict and technical, and likely to produce inconvenience or injustice, it is for Congress to provide a remedy by altering the existing laws, and not for the Court."

So also in the case of Thatcher *vs.* Powell, 6 Wheaton's R., 119, the Court held that "in summary proceedings, when a court exercises an extraordinary power under a special statute which prescribes its course, that course ought to be pursued, and the facts which give jurisdiction ought to appear on the face of the record."

After escaping the Santillan and Limantour frauds, the occupants and owners of the lands claimed in this case, find yet another foe to their and the city's prosperity, and are once more compelled to ask the indulgence of this honorable Court while they speak of the wrongs they have suffered, and the high crimes and misdemeanors that have been committed, in number astounding, and in variety remarkable, in order to rob them of from three to fifteen millions of dollars worth of property. I say from three to fifteen millions, because at this time I do not know the extent of land for which confirmation will be asked—it cannot be less than the first named, and may amount to the latter sum. To speak within bounds, not only the corporation but thousands of individuals are directly interested in the defeat of this claim. The entire tract is situated in the city and county of San Francisco, and is within the four leagues finally confirmed to the city as the successor of the former pueblo of San Francisco. Over one half of the tract was within the charter limits of the city under the act of the Legislature of 1851; all of which portion more than ten years since was granted

by the city to the occupants, my clients, saving and excepting certain lots and blocks which were reserved by the city for public purposes. (See Report of the Commissioners, setting aside lots on Potrero, Dwinelle's Colonial History of San Francisco, Addenda, pages 292, 293.)

The ordinance, commonly called the "Van Ness ordinance," granting these lands and the acts of the commissioners were ratified and confirmed by an act of the Legislature of the State of California, (see Addenda to Dwinelle, p. 216,) and the same was subsequently ratified by acts of the Congress of the United States.

In the famous case of Hart *vs.* Burnett, the Supreme Court of California, before the act of Congress passed, determined that the ordinance was valid, and conveyed the title, *the Legislature* having assented thereto and ratified the same, (15 Cal., R., p. 530.)

By an act of the Legislature, passed 1856, the city and county governments were consolidated, since which time a board of supervisors has exercised the same powers that were formerly exercised by the common council for the city and the Board of Supervisors for the county. In October last the balance of the pueblo lands embracing the remainder of the lands claimed in this case, by order of the Board of Supervisors of said city and county, was donated under certain conditions to the occupants, reserving to the city and county the right to select one-tenth of such lands for public purposes. (See Consolidation act and laws affecting San Francisco, pages .)

The right and title thus acquired by my clients, if the claim is for half a league or 2,220 acres, could not to-day be purchased from them for less than $15,000,000 in gold coin, while its prospective value is almost incalculable. In a few—a very few years, it will be the very centre of the city as to commerce, population and trade. The city commenced at the northern end of the peninsula and spread, and is spreading rapidly southward upon and beyond this property. Upon the Potrero proper and within the stone wall there are homestead associations, ship-yards, two [redacted] railroads, a glass factory, rope factory, candle factories, glue factories, soap factories, hotels, grocery-stores, boarding-houses, slaughter-houses, powder magazines, schools, (and I believe one church,) tanneries, car-houses, machine shops, forges, gardens, wharves, bridges, hundreds of dwellings and families, and a Magdalen asylum, while outside the wall and within the limits of *any* half league that could be selected contiguous to that within the wall, are situated the great woolen mills and other manufactories, a deaf and dumb asylum, four other railroads, other churches, schools, and edifices, and thousands of homes.

The simple question is, whether a claim based upon a paper which the grantee's own father called a lease after their death, and has been so weak that claimants themselves have twice, in effect, pronounced it of no value by introducing two acknowledged forged grants, which, together with possession were proved and sustained by the basest crew of perjured miscreants that California ever produced; whether a claim that was rejected by the district court more than five years since, (which rejection was generally regarded as a finality,) but is now revived by a band of California and Atlantic speculators, a claim based upon a paper, too, which created a simple usufruct, which, by the Mexican law expired with the usufructuaries, a claim without the merit of exclusive or other possession known to the law, prior to the treaty of Gaudalupe Hidalgo—gives the speculators such an equity as entitles them to take from my clients land which more than half a century since was dedicated to the Pueblo of San Francisco, and which has been confirmed to its successor, the city, for the benefit of the inhabitants thereof, and been by that corporation granted to such inhabitants, and for years past has been bought and sold like other real estate therein,—can or ought now to be confirmed?

'Rarely has this Court been called upon to decide a cause directly affecting so many individuals and involving such an amount in dollars and cents.

The questions are few and are either expressly determined by the colonization laws of 1824 and regulations of 1828, or have been decided by this Court. It is admitted that the land is within the four leagues confirmed to the pueblo, but falls, as it is claimed, within the exceptions stated in the decree of confirmation. It has been judicially determined that a pueblo was entitled to four square leagues, and became such proprietor by operation of law upon its organization, holding the same, however, in trust for the benefit of all its citizens. In one of the amended petitions, and in the petitioner's brief, it is claimed that the provisional license was issued under the colonization laws of 1824, and regulations of 1828. But the Governor could not make grants of pueblo lands under the colonization laws. Section 2 of that law reads as follows, (Rockwell, 451,):

"*The objects of this law are those national lands which are neither private property nor belong to any corporation or* PUEBLO, *and can therefore be colonized.*"

That law was applicable to *national lands* only, and not to lands belonging to private individuals, corporations, or pueblos, pueblo lands being, in terms, placed on a precise equality with private property, for such lands could not be granted or colonized.

The Governor knew this, and he did not make a grant of this land or create any estate in it. He did not intend to grant, and the de Haros did not dream that he had granted it. They knew he had not granted it. Mrs. Bernal, claimant's most important witness, says the boys *had leased it*, (transcript, last answer, page 35,) and Francisco de Haro, senior, an old Mexican official, (see Dwinelle everywhere) and a man of more than ordinary intelligence, told the witness Rideout, in 1847, when witness desired to purchase, that he could not sell, *that he had only a lease*. Transcript, p. 79, answer 4: "I saw this paper about the latter part of June or early in July, 1847. I was talking with Mr. De Haro about purchasing a piece of land on the Potrero. I asked him what title he had; he showed me this paper (provisional license) the next morning, and said he could not let me have the land; that he had no right to sell. I understood him to say he had a lease of the Potrero, that he could not sell it. He showed me the paper as his title, but he folded it up again and said he could not sell; *that he had a lease and rented the Potrero.*" The Governor did not grant the land because the ejidos had not been assigned to San Francisco, but they have now been assigned by the decree of confirmation in the city case and by the action of the city authorities in granting some and reserving some for public purposes. The term "ejidos" was sometimes used in a limited sense to describe a certain portion of the pueblo lands lying immediately outside the town, and being in extent from a quarter to half a league around it; but it was oftener used, especially in California, to describe the whole of the common lands of the pueblo, and in that sense it was doubtless applied and understood both by Jimeno and Micheltorena in this case. (See title Ejidos, Dwinelle, p. 106.)

Mr. Dwinelle fell into many errors in his original work or brief, some of which he discovered and corrected in the last edition; among others this is one. There are other points which presently we shall refer to. In the city case the city contended that the Pueblo dated back to the founding of the Presidio, and was a Presidial Pueblo. This the representatives of the United States denied, but contended that the secularization of the missions was the foundation, that an attempt was made to create a pueblo out of the ex-Mission of Dolores, which embraced other lands, or had altogether failed. In endeavoring to avoid the mission pueblo, Mr. Dwinelle has made use of some remarks which are seized upon by claimants and quoted as though they were decisive in their favor.

Mr. Dwinelle was undoubtedly right in his proposition that the pueblo was a presidial one, for this reason, that when it was founded there were sufficient inhabitants to entitle them to the

rights and privileges of a pueblo, (Dwinelle, p. 25,) and besides commandantes were authorized to grant building lots, and did make such grants, which they could not do out of the public domain. But it embraced the Mission as it might under the plan of Pitic, which expressly provided that pueblos of *gente de razon* should not be located within five leagues of each other, but they might embrace Indian pueblos. (Addenda, Dwinelle, No. 4, p. 12.)

This was so, under the Spanish rule even, which carefully guarded against a mingling of the races. But after the revolution and plan of Iguala and independence of Mexico, when Indians were made citizens, there was less reason than under the Spanish regime for keeping the Indian and white communities in different localities. So here the white settlement, which was first formed at the presidio or military post, after the Mexican independence commenced to scatter in different portions of the Pueblo; first a portion removed to "Yerba Buena," the port, the spot where now are the principal commerce and trade of San Francisco; and a few years later, the great bulk of the California and Mexican portion of the community resided at the Mission of Dolores. Elections of municipal officers were held at the Presidio, at Yerba Buena, and at the Mission respectively, and building lots were granted to residents in each locality, the Mission being the last of these places where such grants were made in consequence of the pious desire of the fathers to keep the neophytes from mingling with the Spanish race "lest it cause the loss of their souls." The Pueblo was called by the rude and unlettered inhabitants, "Pueblo of Yerba Buena," "Pueblo of San Francisco," "Pueblo of San Francisco de Assis," and "Pueblo of Dolores," depending sometimes on the intelligence of the writer, sometimes and oftener upon the place where he lived or happened to be at the time of writing, but it was all one and the same thing—the same corporation originating with the Presidio, but embracing the Mission and Yerba Buena and whatever "ejidos" or common lands might be set aside to one or the other, or all, belonged to all—was the property of all—of *the* Pueblo—of *that* Pueblo, which there existed and possessed and of right owned four square leagues of land, which it held in trust for all of its citizens. The officers of pueblos could not make grants of land outside the limits of the corporation. (Dwinelle, Addenda, p. 34.)

Jimeno, in this case, recommended a provisional license, and such was issued in fact and in name, for Jimeno endorsed upon it, that "a note of this provisional license is made in the respective book at page 8," and signed the same "Jimeno." This was the paper delivered to the De Haros, and it mattered not then

what the entry was in "Toma de Razon" or in "Jimeno's Index," whether in the one it was named "*titulo*," or described in the other as "*concedido*." The document they received spoke for itself, and they at least and their father understood it. It was a perpetual reminder—a continuing declaration to them and their heirs and assigns that it was not an interest in the land, but a personal interest—a usufruct that died when they died. 1st. White's Recopilacion, pages 132, 134: "Usufruct is a right of using and enjoying all the fruits or profits of a thing belonging to another without impairing it." "The usufruct is put an end to, and is united with the property. 1st. *By the death of the usufructuary*," &c., &c. "5th. By the expiration of the period of the *concession*." So if Jimeno did say of it in his index "*concedido*," and in "Toma de Razon," "titulo," it was not after all a misnomer of a temporary license or usufruct."

The Alviso case, which is relied upon by claimants as an authority, is not at all similar to the one now under consideration. That was a provisional grant made with the intention of subsequently issuing a complete title. The grantee with his family resided upon the premises for the period of fourteen years, and cultivated the land; thus by inhabitancy and cultivation, complying with the requirements of the colonization laws.

This Court has decided in Garcia's case, 22 Howard, 282, that a provisional license ought not to be confirmed—that too in a case where there were no objections to making the grant, but where the Governor intended to make one when it should thereafter be applied for, and where the licensee in good faith *occupied and inhabited*. So too it was held that the claim must be rejected in the case of the United States *vs.* Josefa Montalva de Serrano *et al.*, No. 66, decided at the present term of this Court, where the party under whom the appellees claimed had been in the continuous possession from 1818 or 1819, up to the time of his death in 1852, under a written permission from the priest of the Mission and commandante of San Diego; had made improvements on the place, consisting of two or three adobe houses, planted a vineyard and orchard, and had a few acres beside in actual cultivation, and had his flocks and herds upon the premises, and was in the peaceable and undisturbed possession and occupation during the whole period of the Mexican sovereignty in California until the country was acquired by the United States The Court say "a possession under a simple permission to occupy could not raise even an equity against the Government." They also say: "If then Spain and Mexico never granted this land, or contracted to grant it, or were under obligations to grant it, the claim has surely no va

lidity against the United States. But it is insisted that if the legal title fails yet the notorious and long continued possession establishes an equitable one. The actual possession in this case was limited to a very small quantity of ground; but conceding that it embraced five leagues, no equities attached to it, considering the manner in which it was obtained and continued. There is no adverse holding here but *the possession was a permissive one and consistent with the proprietary interest of Spain and Mexico, and the fact that those governments did not terminate the possession which was a mere tenancy at will, cannot create an equity entitled to confirmation. Serrano held under a license to occupy, and the license could be revoked at any time.* The failure to revoke it cannot change the original character of the possession into an adverse one." In Serrano's case there was inhabitation and cultivation for the period of thirty-three or thirty-four years, and yet, as was very justly determined, the claimants had no interest in the land, and the case did not contain equities sufficient to entitle it to confirmation. As we shall presently see the permission of the priest and commandante to Serrano was just as good a foundation for an equity in that case as the permission of the Governor was in this case, for both were equally without authority. Were an equity possible in either case, how infinitely superior would that of the Serranos be to that of the de Haros. The possession of the one was exclusive, extending over a third of a century; that of the other, not exclusive, of only two years' duration, and that in common with the entire community. The Governor knew he could not make this grant from Jimeno's report, as appears from his subsequent acts. Long prior to the adoption of the colonization laws of 1824, the Spanish attorneys general had decided that governors or political chiefs could not make grants within the four leagues. See opinion of the attorney general of Chihuahua, rendered in 1785. (Dwinelle's Colonial History, pp. 29, 30.)

A similar question was submitted to the attorney general of California as late as 1836, and he most unequivocally gave it as his opinion that such lands could not be granted by the Governors, but must be granted by the municipal officers. (See Addenda to Dwinelle, pp. 50, 51.) Even the decree of the Cortes of Spain, of January, 1813, which provided for the sale and distribution of the pueblo lands, in harmony with the ancient customs and laws of Spain, gave the power to the ayuntamientos, and not to the governors, as Mr. Dwinelle erroneously stated in his argument, to dispose of such lands, but required the approval of the provincial deputations. (See this decree, Article 17 Addenda, Dwinelle, p. 22.)

We have also the opinion of this court in Cambuston's case,

(20 Howard, 63,) which has been again and again re-affirmed, that the doctrine of presumption as to the power of California governors under the law of 1824 and regulations of 1828, is not at all applicable, because the authority is therein espressly conferred and the terms and conditions are specifically prescribed. The Mission cases are on this point equally decisive, as is the Angel Island or Osio case, where it was held, that as the power to grant islands was conferred by a dispatch from the supreme Government, which required the Governor to act *in concurrence* with the departmental assembly, that a grant made by the Governor without the concurrence of that body was void for want of authority. This same doctrine is reaffirmed in 1st Wallace, 745. In striking analogy to this dispatch is the 77th article of the Mexican law of 20th of March, 1837, entitled "Provisional regulations for the interior government of the departments," which confers the *only* power, if any, to grant pueblo lands. As translated by Hartnell and Halleck, (see Appendix to Debates in the Convention of California, page 30, section 14, under the head of *Prefects and Sub-Prefects*,) it reads as follows: "They (the prefects) will, by their own authority and agreeable to the laws, regulate the distribution of *common lands* in the towns of the district, provided there be no law suits pending in the tribunals respecting them, the parties interested having the right to appeal to the Governor, who, in concert with (Hawes translates these words, "who with the concurrence of") the departmental legislature, will decide definitely what may be most convenient." In a note to this section the learned translators say that "*common* lands cannot be sold without *legislative authority*."

It appears to me clear that the power here conferred was simply appellate, but whether that or original, it required the *joint* act of the Governor and Legislature, as in granting islands. The Noe and Bernal grants, portions of which are within the limits of the pueblo, were granted with the approval of the assembly.

The case of Brown *vs.* the city of San Francisco, (16th Cal., 475,) in which the State court decided that grants could be made within the general limits of a pueblo, is by no means an authority favorable to claimants. That case was concerning a piece of land on the Bernal grant. Although portions of the opinion may be incorrect, yet the conclusion may be and is correct, if the article (77) confers original jurisdiction. We quote as follows: "The whole matter was subject to the control and direction of the *Governor and territorial deputation;*" same in Hart *vs.* Burnett, 15th Cal., 530. "The *Governor and departmental assembly* seem to have acted with a full understanding of all the circumstances of the case, and we are not disposed, without

good and substantial reasons, to question the authority and legality of their acts."

With the Mexican laws so plain and explicit—so well expounded by Mexican law officers—and with the inflexible rules established by this Honorable Court, which must necessarily control and govern this case, were I representing an individual instead of a multitude, I should be tempted here to end my labors; but in view of the vast public and private interests at stake I deem it my duty, at the hazard of becoming prolix, to proceed.

The object of the colonization law, as is therein clearly and in terms expressed, was *cultivation and inhabitancy*. It was not in the power of the Governor to annul, modify, or amend this supreme law. It gave to him all the power he possessed, and he could only execute its provisions. The petitioners in 1844 were infants under the paternal dominion—twin brothers aged seventeen, (see census of San Francisco for the year 1842, Addenda, Dwinelle, p. 79)—and could not inhabit the land and did not do so, as will more fully appear hereafter. (Query: Could the Governor make a grant to an infant even with the paternal consent?)

The license did not require them to construct a house as *grants* uniformly did, unless the grantee was, at the time of issuing the grant, residing on the land, in which case such provision was not inserted, for the reason that the grantee had in advance complied with the law.

The Governor could no more make a grant dispensing with cultivation and inhabitancy than he could dispose of the public domain for money without such conditions. This Court has again and again decided that a sale made by the Governor was absolutely null and void. (See United States *vs.* Vallejo, 1 Black R., 541; United States *vs.* Workman, *et al.*, 1 Wallace, 745; United States *vs.* Bolton, 23 How., 499.) The Governor could not dispense with *either* cultivation or inhabitancy, for both were necessary and indispensable. The decisions of this Court just referred to are obviously correct, not only for want of power to sell, but for the further reason that it was not the policy of the Mexican Government simply to dispose of the public domain, although it was the owner of hundreds of millions of acres of public land. But it was population, inhabitation, and cultivation that it wanted. However empty the treasury might be, although the invader was at their door, the Governor could not sell, for the reason that a sale would not oblige the grantee to inhabit and cultivate the land. If a consideration in money could not save the grant, how much the less could a paper, dispensing with these conditions, followed by a notorious want of

both, confer any rights? By allowing grants to be made for a consideration or without conditions of occupancy, &c., the Mexicans knew by experience that a few schemers would soon control the bulk of the lands of the nation, as the same class had already done in some of the States of Mexico. Hence they abolished the decree of the Cortes of the year 1813, and substituted the beautiful and comprehensive system of 1824 and 1828, inviting immigration and naturalization, and promised new-comers, as they did their native born citizens, liberal grants of land, provided they would cultivate and inhabit it. Though the license makes no provision for building a house, it does require them to "appropriate it to the cultivation and introduction of property," &c. (See translation, 2d condition, transcript, p. 25.) As they never did cultivate any portion of it, our opponents ingeniously suggest that, notwithstanding the conjunction "and," the cultivation intended was "the cultivation of stock."

From the prohibition to sell and the absence of the condition referred to, as well as the yet more important one requiring the parties to apply to the authorities for juridical possession, it is certain as anything can be made certain, that this was not a grant of any interest in the land, but was precisely what Jimeno called it, a provisional license. But here our opponents again very ingeniously suggest that the word "provisional" means "conditional" and the word "license" means "grant." I do not know what new dictionary our friends have consulted, but considering the magnitude of the case we are only surprised that some lexicographer hitherto unknown to fame has not favored us with a work of this kind, giving definitions of these and other words in harmony with those suggested by the learned counsel; but until the appearance of such new work we beg to be excused from adopting these new ideas.

There is yet another reason why this is not a grant, which is so clearly and concisely stated by Judge Hoffman that I adopt his language:

"The language of Jimeno indicates with entire precision the nature of the rights intended to be conceded. He speaks of it not as a provisional grant, but a "provisional license" to occupy land. In the document issued by the Governor he declares that "he has determined to permit them to occupy the land;" and in the third condition the usual phrase which declares that the party shall lose his right to the land (*al terreno*) in case he violates the conditions, is altered to "he shall lose his right to this provisional concession."

"That this change of phraseology is not accidental is apparent on examination of the copy of the permit retained in the archives. This document is in the hand-writing of Jimeno.

In writing the last condition he has evidently pursued the usual form, '*perdera su derecho al terreno y sera*,' etc., but recollecting that the instrument was not a grant and conferred no right 'to the land,' he has erased those words and substituted the phrase above quoted, '*perdera suderecho a esta concession provisional*,' etc. A similar alteration in phraseology appears in the note by Jimeno of the recording of the grant. Instead of the usual form, '*queda toma de Razon de Este titulo en el libro correspondiente*,' the phrase '*queda toma de Razon de esta licencia provisional en el libro correspondiente*' is substituted, indicating the clear discrimination in Jimeno's mind between a grant, whether absolute or provisional, and the mere license to occupy, which he was signing. As observed by the counsel for the United States, 'these acts of Jimeno give character to the document signed by Micheltorena, and fix its meaning *with a certainty*.'"

This license created no estate or interest in the land, and cannot be the foundation of an equity for the further reason that it did not purport to sever or contemplate the future severance of any particular piece of land from the public domain, and by no act of the grantees or their heirs was there any such segregation prior to the treaty.

What and how much land do appellants claim? After an examination of two or three California printed briefs prepared in their behalf we are unable to answer this question. The young de Haros petitioned for 2,288 varas north and south by 2,508 varas east and west, in form almost a square, as represented by their deseño. This would amount to 996 acres, *or* 114 *acres less than a quarter of a league*. Is this the amount claimed? Or do they claim to the wall, and if so, why? Nothing is said by them in their petition about any wall. The language they make use of, as translated, (Transcript, page 21,) is "a small parcel of land, called Potrero de San Francisco, measuring from north to south 2,288 varas, and from east to west 2,508, being measured as far as to the Lomeria range of highlands, because there is no competent person to do it, according to the annexed sketch;" and this is the *only* description which they give of it. The father, in giving his permission, describes it as "the potrero, etc., represented in the sketch accompanying the petition," and the same person, in applying to the alcalde for a premature report, avers that "the enclosures are thrown down." The sketch referred to does not exhibit or refer to any wall or line of wall, but exhibits a square not extending either to the bay or to the esteros. The order for the provisional license describes it as "the piece of land called Potrero de San Francisco, to the extent of half a square league; the

boundaries to be the extremities of the mouth of the potrero and the range of hillocks or highlands environing it." The license itself calls it the "*pasture land called Potrero de San Francisco, from the mouth of the creeks, with the range of hills that encircle it,*" and afterward states that " the parcel of land to which reference is made is half a square league."

Again we ask, do they claim 2,288 varas by 2,508 ; if so, where and how is it to be located ? Or do they claim to the old line of stone wall ; and if so, why ? Or do they claim a half league ? Within the old stone wall there are about 1,100 acres of land, or a fraction of over 100 acres more than was petitioned for. This surplus is now worth hundreds of thousands of dollars ; but if a half league is claimed, then confirmation is asked for 1,224 acres more than was petitioned for. The license does not refer to the sketch or map for a description, neither does it describe anything; but it is altogether vague and unmeaning. It does not concede possession of *the* 2,288 varas by 2,508 varas petitioned for, but gives possession of the land "*from the mouth of the creek with the range of hills that encircle it,*"—not the wall that formerly encircled it, for that was destroyed, if De Haro is to be believed. The word potrero does not aid them, for we are told that means a fenced pasture-ground; and this was not fenced, according to De Haro. Besides artificial lines and monuments, like a fence, enclosing it, were *expressly ignored*, and a *natural range of hills* was designated. But where is that range? It does not exist. (See Coast Survey Map of San Francisco, published in 1859.) The description is so vague and indefinite, that no man on earth can lay off the land. The learned counsel—who filed the petition before the Land Commission—saw the difficulty about the boundaries, and therefore did not attempt to describe it. Thus things remained until the appearance of the second forged grant, which did describe the property as enclosed by a stone wall, (Transcript, p. 118;) whereupon counsel for claimants promptly amended their petition (See Transcript, p. 119) in this respect as follows : "El Potrero, situated in front of the ancient Mission of Dolores, bounded as follows : On the north by the estuary or Mission creek, on the east by the Bay of San Francisco, on the west by a stone wall and fence extending from said Mission creek to a creek or estuary emptying into said bay, and which separates said tract of land from the rancho of Carmen Bernal, and constitutes the southern boundary of the said petitioner's claim."

It is a notorious fact that the wall referred to passes over an almost level plain, but a few feet above tide-water, (see same Coast Survey map ;) that there is no range of hills surrounding the Potrero in front of the Mission ; that there is a range of

hills, not surrounding it, but running north and south, but in the rear and to the westward of the Mission. Do counsel say they claim to that range? Then we reply they are precluded, not only by their petition to the Governor in reference to quantity, but they are prevented from claiming west of the wall by their amended petition and proofs in this case, if for no other cause. But do they urge that was the range intended? Then we reply, that is impossible, not only from the petition and sketch laid before the Governor, but because the land would not then have been in front of the Mission, but would have surrounded it; indeed, would have swallowed it up altogether. Do they claim that that was the range intended because the license was for half a square league, then we inquire, does any sane man believe that when the De Haros petitioned for 996 acres of land, and objections were made by the Secretary of State even to that, on account of the assignment of the Ejidos, (as they claim to the Mission,) and the Governor gave them permission to occupy, which was defined on the paper itself delivered to the parties as a "provisional license," that the Governor granted, or intended to grant, not only the land petitioned for, but *twelve hundred and twenty-four acres more, which would embrace the Mission church and buildings and all lands contiguous to them?* In order to obtain that quantity it would be necessary not only to do this, but run far north of the church and Mission creek into the city. In view of the objections raised by Jimeno, it is possible, and not improbable, that the Governor, as a set-off to the disappointment of the boys, may have intended to permit them the temporary occupation of a larger tract than was petitioned for.

In consequence of the uncertainty of the petition and sketch, and the yet greater uncertainty of the license, coupled with the fact that the possession was equally uncertain, we insist that there is an entire want of equity in the case. We affirm and shall endeavor to maintain that the alleged grantees never had possession of any of this land. This necessarily involves a careful study of the testimony. To show the falsity of their proof of possession, we shall be compelled to examine the evidence in reference to the forged documents, and make incidental reference to other points in the case. As we have already seen, Francisco de Haro, Sr., applied to the alcalde, contrary to general usage, in advance of the presentation of the petition to the Governor, for a report, emphatically averring that the land was "unoccupied," and Alcalde Hinckley good-naturedly acceded and certified that there were no claimants of any kind, and that the land was not occupied by any community or private individual. The subject matter, together with the report and accompanying petitions, being referred to Jimeno, by order of the

Governor, and Jimeno believing the statements of petitioners and their father, and because the alcalde had reported that the lands were vacant, reported as he did to the Governor, but evidently, from his general knowledge of the country, thought it must be within the Pueblo; and we now know that Jimeno was correct; that the statements made by the de Haros and the report of Hinckley were untrue; that there *was* a claimant and owner, the PUEBLO of San Francisco, which had obtained its rights long anterior, and has persisted in maintaining and asserting them, even under the disadvantages of conquest and a permanent change of flag, until at last those rights have been finally recognized by the highest judicial tribunals of the country. We shall presently see that that portion of the alcalde's certificate which states that the land was not occupied by any community or private individual was equally untrue, for it is established beyond all cavil, by the evidence, that at that very time, and for many years prior, it was and had been the common pasture ground of the inhabitants of the Mission.

The provisional license was issued May 1, 1844. Claimant's petition before the land commission, after referring to the license, avers as follows, (Transcript, p. 5 :)

"The said proceeding having been duly referred to the Departmental Assembly, that body resolved, on the 24th of May, 1844, that the land might be granted unconditionally; whereupon, on the said day, the said Micheltorena made a supplemental grant *upon the same paper as the first and immediately following the same*, by which the said land was ceded to the said Francisco and Ramon *in full and complete ownership.*" *We call the especial attention of the Court to the grant last referred to, as well as to the fact that it was recorded in San Francisco, January* 12, 1850.

The alleged grant is in words and figures as follows, (Transcript, p. 26 :)

"MONTEREY, *May* 24, 1844.

"The proper inquiry relative to the pasture-land having been made, *whether the grant of it would interfere with the limits of the new town now forming at Yerba Buena*, or will be injurious to the property of the Mission, or obstruct the transit of the road or public right of way, and it resulting that it will not be thus prejudicial, *and in accordance with the opinion of the Honorable Assembly of the Department*, expressed in its decree of this date, I have determined to grant the aforesaid land in fee simple to the citizens Francisco and Ramon Haro, that they may do what they please with it."

"MAN'L MICHELTORENA.

"MAN'L JIMENO, *Secretary*."

The certificate of record is as follows:

"Recorded in the office of the Alcalde in book A of Spanish Records, pages 66 and 67, San Francisco, January 12, 1850, 12 m."

"JOS. HENREQUES,
"*Recording Clerk.*"

It is now conceded that this grant is a forgery; but we nevertheless glean from it several important facts, among which are the following:

1st. That in the opinion of its author the provisional license was worthless.

2d. That the pueblo had some rights, or might have; and in order to divest it of those rights it required *the concurrence* of the Departmental Assembly.

3d. That this forgery had existence and was recorded on the 12th day of January, 1850, before the admission of California as a State, before the organization of her county governments, and almost fourteen months prior to the passage of the act of 3d March, 1851, and if the testimony of Julius K. Rose, the administrator of the estate of Francisco de Haro, senior is correct, said forgery was in existence in September, 1849, the very year in which de Haro died, (Transcript, p. 5,) the boys having been killed in the Mexican war, in 1846, (Transcript, pp. 16, 36.) Rose says the document came into his possession in September, 1849, some months before he took out letters of administration. (Question 8, p. 10, Transcript.) He had a copy made of it shortly after he received it. *He is the more certain this part of the writing* (the forgery) *was then on it, because a man went to him and told him they never had a grant of the land, but only permission to occupy it for one year, and he got the document and showed it to him.* He also showed it to others, among whom was Hiram Pearson. (Question 3, by Greenhow, p. 11 of Transcript.) It is true that Tracy (Transcript, p. 73) and Stuart (p. 66) state it was not there in December, 1849, and Davis states it was not there when he saw it, in September or October, 1849. (Transcript, p. 82.) Rose undoubtedly enjoyed better advantages and facilities to examine the document than any of the witnesses introduced by the United States, and if he is correct its history can well be imagined. It will be remembered that Rideout talked with de Haro about purchasing some land on the potrero in the summer of 1847. The day after, de Haro showed him the license, and toldhim he could not sell—that he had only a lease. The witness examined the paper, and the forgery was not there. Here was an *American* wanting *then* to buy a piece of the potrero when there was no excitement or

wild speculation. De Haro was astonished. It was the first desire of the kind that had ever been expressed to him. He sleeps upon a proposition so novel; he scans over the document received from the Governor; he sighs as he finds he cannot sell; that it is only a license, temporary at that. He exhibits it to the would-be purchaser, and informs him of the disability he labors under.

The next year gold is discovered. And then occurs such scenes and changes as the world never saw before. The old Mexican looked out from his adobe home and saw fleets of ships and vessels, loaded down with the countrymen of *that man* who had wanted to buy a piece of the potrero, come to an anchorage in the quiet cove at Yerba Buena; saw citizens of that same nation pouring over the Sierras, in saddle-trains and wagon-trains by the tens of thousands; saw quiet Yerba Buena changed into a noisy, bustling city; saw houses reared as if by magic, and thousands of tents dotting the hill-sides; saw gold dust weighed by the pound, and silver coin measured by the quart and exchanged for land. He remembered that *one* of that same race had wanted to buy, and others might want to buy, portions of the potrero. Could he not make a title that would be good enough for his and his country's conquerors? He was absolutely without scruple, as half a score of his transactions show—with him the thought was but the prelude to the deed. If Rose is correct, who doubts that Francisco de Haro was the author of this forgery? Whoever he was, he must have entertained no very complimentary opinion of his fellows, as must the claimants and their counsel when they attempted to palm off this document as genuine upon the Board of Land Commissioners, for of all the counterfeits that have ever been introduced into a court of justice, I venture the assertion that the signatures to this least resemble the original. The track of the lumbering elephant as much resembles that of the nimble deer as does this counterfeit look like the original. A simple inspection of the photographic copy or original will demonstrate the truth of the assertion, and show what a miserable counterfeit it is. And yet Wm. A. Richardson, after having taken "a second swear at it," pronounced the signatures genuine, as did Francisco Arce and Jose Maria Covarrubius.

The claimants, from the time of filing the petition, March 16, 1852, up to March 2, 1854, relied upon and were seeking to obtain confirmation upon this rude forgery, on which last-mentioned day they filed forgery No. 2, with an act of juridical possession extended on the same sheet of paper purporting to be signed by Juan, N. Padilla alcalde, and Gregorio Briones, and Francisco Guerrero (who had for years been dead), as attest-

ing witnesses. (Transcript, pp. 118, 119.) It is proper to observe that this document was filed after it had been clearly established by evidence that the first was a forgery, and after an uncle of the claimants had disproved their possession; besides, the land commission just before this had adopted a rigid line of decision in reference to boundaries, which compelled claimants to define the limits of their claims with great precision.

Bearing these things in mind, we proceed to an examination of the second forgery. The signature of Micheltorena was very well executed, and counsel for appellants insist it is genuine; and while I freely concede that the number of witnesses who testify to its genuineness is greater than that who testify that it is not genuine, yet it is not his genuine signature as I believe, first, from comparison, and second, for numerous other reasons, not necessary or proper here to state. The signature of Jimeno is a forgery, as is that of Guerrero to the act of possession. That the document was forged or simulated was as plainly to be seen then as now by a simple inspection of the paper; or at least so it seemed to those who were representing the United States.

The Law Agent, Mr. McKune, and his assistant, Mr. Blanding, as well as others appearing for the United States, although they did not profess to be very much versed in Spanish or civil law, yet from their reading of the common law remembered "that a deed must have the regular stamp prescribed by the statute, else it could not be given in evidence," (2 Blackstone's Com., 297; 1 Stephens' Com., 448,) and that "a stamp duty was of service to the public in general, by authenticating instruments, and rendering it much more difficult than formerly to forge deeds," (1 Blackstone's Com., 323, 324; 1 Stephens' Com., 584;) and turning to the Spanish and Mexican laws they at once discovered that stamped paper was issued for a *certain* year or years, and was good only during the time *specified*, and under no circumstances could paper of the wrong year be used without being re-validated, and that instruments extended upon such paper were absolutely null and void, (Escriche. art. Papel Sellado, and Instrumento Publico, sec. 11,) and they wondered how their brethren, as good Spanish scholars and lawyers as there were in the nation, could have been so imposed upon, although they were so much interested in the property.

Reasons for pronouncing it a forgery on inspection.

First, the grant was upon stamped paper issued for the year 1843, while it was dated September 18, 1844, (p. 116.)

Second, the word (tres) three had a blot upon it, which was evidently the work of design.

Third, the translation of the document, *filed* by claimants *at the same time* with the original, had no translation of the word "tres." It read thus: ("Third seal eight dollars.) Issued provisionally by the maritime custom-house of the port of Monterey, in the department of California, for the year one thousand eight hundred and forty and

"MICHELTORENA,
"MANUEL CASTANARES."

Fourth, the description of the land was entirely changed and made perfect by a stone wall not before named.

Fifth, without any new measurement its extent was declared to be 3,000 varas long and an equal number in breadth.

Sixth, it declared, as a consideration for making the grant, that Francisco de Haro, the father, had services and credits against the public treasury, all of which was new.

Seventh, it did not impose the usual or any other conditions.

Eighth, the signature of Jimeno was forged.

Juridical Possession.

First, it was plain that Guerrero's name was forged.

Second, the act of juridical possession was upon the same sheet of paper with the grant, which was an unheard-of thing.

Third, it had no one of the formalities usual in such cases. The witnesses were not *named* in either certificate, their signatures even appeared but once, they were not sworn, the *colindantes* (neighbors) were not summoned, the cord was not measured, the measurement was not around but through the tract, and the certificate signed by the witnesses had evidently been so framed that *any* tool might sign; and in case none such could be found, then *dead men's names* might be used.

Finally and lastly, there was no note made of it in "Jimeno's index" or "Toma de Razon," and neither the grant nor the juridical possession, which is an open and notorious act, had ever been heard of before by any person except the claimants and their witnesses.

This grant and the act of juridical possession are now conceded to be forgeries; yet Gregorio Briones, of Marin county, the living, attesting witness, and Juan N. Padilla, of Los Angeles county, the alcalde who professed to give such possession, went upon the stand and deliberately testified that juridical possession of the property was given by them to the young de Haros on the day the act bore date, May 5, 1845; gave all the particulars of the measurement and the names of the persons present, who unfortunately were all dead except themselves; and fur-

ther stated that on the same day they signed the certificate. Padilla further stated that they all signed with the same ink, which is contradicted by the document itself and the testimony of experts. Manuel Castro, of Monterey county, just as circumstantially and positively testified that in November, 1845, he, as prefect, visited Francisco Guerrero, sub-prefect, who showed him the document twice, once at the custom-house and once at the Mission. Guerrero was the son-in-law of de Haro, having married Josefa de Haro. (Transcript, p. 74.)

Briones, p. 39, Padilla, p. 52, and Castro, p. 44..

Gliddon also made ex parte affidavit that he *found* the grant among the papers of Robert T. Ridley, deceased. (Transcript, p. 120.) Ridley was no relative of claimant's, by marriage or otherwise, though Commissioner Farwell in his opinion characteristically makes the blundering statement that Ridley was the brother-in-law of the grantees. It will not now be denied that the affidavit of Gliddon and the depositions of Briones, Padilla, and Castro are base perjuries.

Possession.

The three worthies first named comprise three of the six witnesses who testified as to the possession of the grantees prior to the treaty of Guadalupe Hidalgo. Briones said *that "at the time juridical possession was given* the de Horos had some horses there." Padilla said "they then had a small house on it and some oxen and horses." Castro said that at the time referred to by him "the de Haros had it occupied with cattle and horses." As Padilla and Briones make no pretence of any knowledge of possession *except at the time when juridical possession was given*, and as Castro does not pretend to know anything of it *except at the time he saw the grant*, and as there never happened to be any such time or times, it not only totally destroys their evidence, but tends to throw discredit on the other evidence as to possession, because such audacious perjuries have been resorted to. I will here leave this interesting trio, and will proceed to examine the remaining testimony on this branch of the case.

William A. Richardson, of Marin county, the first witness introduced before the land commission in this cause, in consequence of the peculiar fame he has acquired in the fierce conflicts between claimants and the United States, is entitled to a separate and special paragraph. Like Don Quixote, he never heard of a poor claimant in distress to prove a forged document or a possession that had never existed, that he did not fly to his relief; not with nodding plume and burnished spear, but with hand ever open and pockets sufficiently capacious to receive the ex-

pected gratuity. Limantour was his patron saint, and he affected to ape him. Unlike his patron, however, he did not present claims for *all* the most valuable lands in California, and in quantity amounting to 134 square leagues, but modestly presented a claim for the Albion Rancho of 22 leagues only, which the district court has just rejected for fraud. Without commenting on the forty-eight depositions given by him and the forty-three by Castro in these cases, (see Limantour Transcript,) we come to the examination of his remarkable conduct in this remarkable case. He is asked as to the genuineness of Micheltorena's and Jimeno's signatures (Transcript, p. 6) and shades of Santillan and Limantour!! After proving their signatures to the provisional license, he gives it as his opinion that their signatures to the first forgery are not genuine. He is asked one more question as to what he knows about the possession of the land claimed, and he replied as follows: "The place, which is surrounded by natural defences on three sides, and surrounded by an artificial fence on the other side, was occupied from the time of the grant above mentioned to the death of the *grantee, by him. After* his death his two sons used it in the same way until their murder, and ever since it has been in the occupancy and use of the family." It is apparent from this answer that he knew nothing of the license to the young de Haros, but supposed it was made to the *father*. Besides, it is a notorious fact that at the time he testified, not one square foot of the place was in the possession of the family, but that then, as now, the entire tract was held adversely. Astonished and dismayed at this testimony, the deposition was here closed, and Richardson departed with faded laurels, and for a period his well-earned reputation as a "professional witness" was seriously impaired. But claimants felt confident that he could, upon a new trial, recover his lost position; so, after suffering between six and seven months to pass by, they introduced him a second time, and without giving any explanation of his former testimony, he stated that he knew that Francisco and Ramon de Haro occupied the Potrero, had a small house on it, and cultivated a small piece of it, but mostly occupied it with cattle and horses, and knew them to live on it in 1844; that it was fenced with a stone wall, and the house was at the entrance or gate. On being again questioned as to the signatures of the first forgery, he stated that in a former deposition he had stated that they were doubtful; but since that time he had seen official documents which he had from Micheltorena, written in as bad a hand as that, and he thought that Micheltorena's and Jimeno's signatures were genuine, assigning the still further reason that the "fetes" they used to have, might cause the difference in their hand-writing.

(Transcript, pp. 12, 13.) Without considering the reputation of the witness, is there a man outside of the lunatic asylum, who, after seeing the paper and reading these two depositions, would give the slightest credit to his testimony? If this is not sufficient, then we say that his connection with the second forged grant, his intercourse with Gliddon in reference to it, (Transcript, p. 64,) his presence at the time Throckmorton inquired of Briones if his signature was genuine, and his procurement of Briones' testimony (Transcript, cross-ex., p. 41,) is sufficient; but if more is required to satisfy the mind of the utter falsity of his testimony, abundant material will be found in the evidence of the United States, as will be presently seen. We will not longer dwell upon this embodiment of perjury and crime.

The next witness to prove possession is *H. F. Teschmaker*. (Transcript, p. 29.) The witness is asked as follows:

"Question 4. Do you know anything of the claim or occupation by Francisco and Ramon de Haro of a tract of land known as Potrero de San Francisco?

"Answer. I know nothing, except by report, as I know other farms in the country. I have seen their horses on the place. We were in the habit of sending our horses to that place to recruit. Permission in such cases was always obtained from Guerrero.

"Question 5. About what year did you see their mares and horses on the land?

"Answer. I saw them there from 1842 up to 1846. By report this place belonged to the De Haro family.

Now, there is not the slightest pretence by anybody that the young De Haros had any possession of this land, or thought of obtaining it or possessing it, until the spring of 1844. Indeed, they had no property until the death of their mother, which then occurred, and they desired this land because they were compelled "to remove the share of cattle appertaining to their deceased mother out of the rancho of the deceased Jose Antonio Sanchez." (Transcript, p. 21.) The witness makes no distinction between the two years preceding and the two years following the license. If this shows anything, it establishes the fact that there was *no change* in the possession perceptible to any one, but that it remained, as it had been for years, open to all the inhabitants of the Mission and pueblo, and had been and was used by them as a common pasture-ground.

Again, why should the witness obtain permission from Guerrero to pasture his horses there, for he then had no personal interest or agency in behalf of any claim to the land; for whatever the boys had subsequent to 1844, they had no interest before that

time, and after that time they were in no manner subject to the will or caprice of Guerrero. It is undoubtedly true that Teschmaker occasionally, during those years, did pasture his horses there by permission of Guerrero. Teschmaker was a foreigner and stranger, and was liable to a prosecution for pasturing his horses on pueblo lands without the permission of the municipal authorities. Guerrero was sub-prefect, (Transcript, pp. 73, 45,) and he was the proper party to grant that permission. (1 White's Recopilacion, p. 73; Addenda, Dwinelle, p. 51.)

This witness makes another awkward statement in his first deposition, (Transcript, p. 28, question 3.) He says he never saw Micheltorena write. In his second deposition, (p. 165, 1st answer on that page,) he says he has seen him write two or three times. Appellants are entirely welcome to all the comfort they can extract from this deposition.

The next and only other witness who swears to possession prior to the treaty is *Carmen Sibriande Bernal*, their *only* witness from the Mission; who testified that she had known it to be occupied by Francisco and Ramon De Haro with cattle and horses, enclosures, a corral, and a small wooden house; it was all enclosed. She said the people at the Mission had not the privilege of pasturing there without the permission of the De Haros; she knew it was all enclosed, but did not know whether it was round or square; she did not know anything about the points of the compass; she had known the property *two years, a little more or less*, and she knew the occupation commenced ten or eleven years ago; *that the house the boys erected remained there until she moved from her old house five or six years before*, and finally she saw them driving stock there, but she did not know whose it was. Fortunately, it is wholly unnecessary to dwell upon this collection of contradictions and nonsense, for the Government produced a cloud of witnesses who flatly contradict her statements, as they do those of the others beforenamed as to a house, cultivation, possession, and residence. She does, however, unwittingly let out one damaging fact in the last answer, on page 35 of Transcript, where she says, "*they had rented the property.*"

Witnesses of Government as to Possession.

Francisco Sanchez, of the Mission, (Transcript, p. 15,) an uncle of claimants of record, testified "that he had known the Potrero ever since he had known anything; that the wall had been there ever since his earliest recollection, and was built by the padres of the Mission;" that there never was a house built there by the De Haros; that they had never lived upon it; and that, from

the year 1844 to 1846 the said lands were occupied by the animals of the inhabitants of the Mission.

Jose de la Cruz Sanchez, another uncle, (Transcript, p. 31,) said the land was loaned the boys provisionally by the Government; they had a dairy or milk ranch on it; they kept cows there, and the public generallykept their cattle on it; that there was no house or cultivation on it previous to the coming of the Americans; they pastured their cattle there, and people generally had their cattle on it.

Miguel Noe, of the Mission, (Transcript, p. 162,) had known the Potrero since 1843. No part of the Potrero was cultivated by the De Haros; neither did they have any house upon it down to the year 1850. Everybody's cattle pastured there; it was common pasture-ground for the inhabitants of the Mission.

Torribio San Faran, of the Mission, (Transcript, p. 89,) testified that he had known the Potrero since 1841. There was no house on it; everybody pastured cattle there—all the world that lived at the Mission. The De Haros did not make any improvements there. No person maintained possession or claimed the right to exclude others during all that time. Witness himself had cattle there, and no person put him off.

Charles Rideout, of the Mission, (Transcript, p. 78,) went to live at Mission in 1847. In spring of 1850 saw a house there on Potrero that was not there when he went to the mines in 1848. The man who lived in the house was a Scotchman or an Irishman. Between 1850 and 1851, Mrs. Bernal moved to a new house; don't think Scotchman's house could be seen from her old adobe house. No other house on Potrero in sight from her old adobe, except Mr. Treats, on the Union race track.

D. Waling, of the Mission, (Transcript, p. 91,) has known the Potrero since the month of April, 1847. There was no house on it when he first knew it; could not tell when first house was built.

J. H. Davis, of San Francisco, (Transcript, p. 82,) had resided in San Francisco since July, 1848. Was acquainted with Mrs. Bernal. She used to live in an adobe house near the Mission. In 1850 or 1851 she moved to a place a mile and a half or two miles beyond that. The first house he saw on the Potrero was the latter part of 1849 or early in 1850, when some settlers moved in and put up two or three shanties. He was in the habit of riding over the Potrero, from 1848 up to that time, nearly every week, and would have known if there had been any houses there, as he saw everything that was on it.

A. A. Green, of San Francisco, (Transcript, p. 102,) has known Potrero since the spring of 1847. There was no house or improvements on it when he first knew it. It was about 1850,

according to his recollection, when the first house was built; it might have been in 1849. There was no occupation of the Potrero, or on it till the latter part of 1849 or 1850. He rode over it in 1847 and there was a broken wall on it, and it was about the same in 1849. (The witness evidently means possession instead of occupation.)

Vicente Miramontes, of San Francisco, (Transcript, p. 105,) has known the Potrero ever since he has known anything. Neither Francisco De Haro, the father, nor his sons, ever had possession of the Potrero; it was public to all the citizens for their cattle. The sons never lived on the Potrero; they lived at the Mission sometimes, and sometimes on the Rancho San Bruno. They lived at their father's when at the Mission, and alone when on the Rancho San Bruno. There was never a house on the Potrero up to the time the Americans occupied the country.

T. Vasquez, of San Francisco. (Transcript, p. 108.) Was formerly administrator of the Mission; had charge of the Potrero lands as such administrator; he had cattle of his own on the Potrero, and gave permission to Francisco de Haro to put his cattle there. He and de Haro had a fence put up to keep the cattle in. There was no house on the Potrero; the boys lived with their father. Witness also gave them permission to put their cattle there. They did not claim the land as theirs. The Potrero lands are in sight of the Mission buildings, and if there had been a house there he would have seen it. Has known the place fifteen years at least.

Charles V. Stuart, of the Mission. (P. 70.) Knows Carmen *Sibrian de Bernal*, and where she lived in the old adobe house till summer of 1850, when she removed to another new house about a mile south. In January, February, or March of 1850, there was a house built on Potrero, inside the wall, by a Scotchman, and a garden fenced in and cultivated in the summer of 1850. That was the only building on the west side of the Potrero; did not know what might have been on the east side. This house was in sight from Mrs. Bernal's old house; no other houses in sight on Potrero.

F. P. Tracy, of San Francisco, (p. 73.) First knew the mission in 1849; was justice of the peace there then; was no house there when he first knew it; was no house there until a Scotchman built one there.

I. N. Thorne, of San Francisco. Has known the Potrero since November, 1849; were some tents on it then; recollects no house. First house he recollects seeing was one on the highest point of the Potrero as it appears from the Mission; it was said to have been built by Hiram Pearson.

If all this testimony does not show that there was no residence, no house, no occupation, no cultivation, or possession, or improvements of any kind, except that done at some time—when, does not appear—by the administrator of the Mission, and the elder de Haro, then there is no faith to be placed in human testimony. It is a noteworthy fact, that of the six witnesses introduced by the claimants to prove possession, four were those patterns of honesty, Richardson and Briones, of Marin county, Padilla, of Los Angeles county, and Castro, of Monterey county. The others, Teschmaker, of San Francisco, who makes the possession commence two years before the boys had any cattle, and Mrs. Bernal, *alone* from the Mission. Of all the residents of that place she alone was called. Of all their immediate friends and companions, not one is presented. Why is this? Of all the wonders of this case this is not the least remarkable, when we know that men were called from distant localities to prove possession who are now known to have committed willful and corrupt perjury. But the Government calls witnesses there resident; indiscriminately calls Mexicans and Californians, relatives of claimants, gray-haired men, who had known the locality all their days; young men, companions and friends of the alleged grantees, who had known the Potrero for a long term of years, and Americans, who, from 1846, '47, '48, and '49 had known the premises; and all tell substantially the same story, establish the same facts, and utterly overwhelm the testimony of claimant's witnesses, singly or combined. Everybody pastured cattle there; no permission of de Haro was asked by any one, but all the inhabitants of the Mission used it as it had been used, and the de Haros dreamed not of disturbing them.

The question is as to the possession *prior* to the adoption of the treaty. Had the grantees or their heirs *then* such a possession or equity as to bind the conscience of the Government of the United States? Not whether Rose or De Zaldo appointed administrators in 1850, or in 1851, then leased the premises and expended a thousand dollars for repairing the walls. Equities binding on the Government could not then be created. They must have existed at the time of the cession of the territory, if not at the time of its conquest. And such equity could not have existed or been created if *they had leased it*, as stated by Mrs. Bernal, or *had a lease of it*, as stated by De Haro senior. In the case of the United States *vs.* King, 3 Howard's R., 786, it was held, that notwithstanding an instrument may contain clear words of grant, if the description is vague and indefinite and no official survey to give a certain location, it could create no right of private property. The same principle was adhered

to in United States *vs.* Boisdore, *et al.*, 11 Howard, 63, and in the case of the heirs of Don Carlos de Vilemont *vs.* United States, 13 Howard, 261.

It lies on the claimant to establish the boundaries of his grant and identify the particular land severed from the public domain, and this severance must have occurred before the cession of the country. The true rule is stated in the case of Smith *vs.* United States, 10 Peters 330, 331, and in 11 Howard, p. 88. The language of the court is:

"We are required to exercise the powers of a court of equity, and adjudge in the given case whether a court could, according to the rules and laws of Spain, consider *the conscience* of the King so affected by the acts of his lawful authorities in the province, that he became a trustee for claimants by an equity upon it amounting to a *severance* of so much from the public domain *before and at the time the country was ceded to the United States.*"

This is the utmost that can be required of this Government. If the Mexican Government had established a commission for the purpose of having the lands that had been granted correctly surveyed, and had conferred upon the board the precise powers conferred by the act of 3d of March, 1851, and their claim had been presented and conducted in the same manner as this has been, and the Pueblo title had been disposed of in the same manner and under the same circumstances—what, think your honors, would that tribunal do with the case? Would it disregard the rights of the Pueblo to the lands dedicated by it, under the solemn sanction of the Legislature, to public uses? Would it disregard the grants made by that municipality, under like authority, to its thousands of citizens? Would it feel that a case had any equity where there had never been anything but a usufruct or servitude, which had long since ceased? Would they see an equity or legal right in a document which in no particular was in conformity with the colonization laws or any other law of the Republic? Would they regard the mere pasturing of cattle upon the premises, precisely as everybody else pastured them, as creating an equity that would take the land and homes and improvements of men occupying it under the most solemn acts of municipal and State governments? Would they not remember that the first proceeding taken (the petition to the Governor) was a misrepresentation of fact as to vacancy? Would they feel like inquiring very closely to see if there ever had been equity, even, when they had endeavored to defraud the Government by forgeries, and had sought to substantiate those forgeries, as they attempted to show their equity (possession) by perjury?

No. Mexico, poor, distracted, and divided as she is; with tribunals often weak, corrupt, ignorant, interested, and prejudiced, has not one, great or small, either under Imperial or Liberal rule, that would dare confirm a claim like this. And shall this Government be more charitable to a wicked case, more generous to a tainted claim and claimants, and more unjust to a municipality and its citizens, than even Mexico would be?

Who ever heard of such a monster in a court of equity? Three forgeries; the two grants and judicial possession; fraud in the inception, fraud throughout; perjury at the very opening, running entirely through it; and at the end, so far as claimants are concerned, perjuries delivered by individuals, by platoons, and by companies. And *such* an equity, too; unlike anything in the heavens above or the earth beneath. That is, to rob a community, holding under rights and laws, to give to speculators who have no rights, past or present. Are not all the equities on one side, with the possessors, the owners under the city; all the crimes on the other? Some one once said that "every rain comes from the tropics and every flash of lightning from the poles." So in this case every crime comes from claimants and every truth from the Government. What equity is there in turning out those who possess and own to put in those who never have possessed and do not own? What equity in taking from the city its plazas and public squares, its school lots, engine lots, hospital lots, and public places? (See report to Common Council by the city surveyor and Board of Commissioners under Van Ness ordinance. Addenda Dwinelle's C. and H. of San. F., p. 293.) "The number of school lots selected is 28; their size, 137½ feet by 137½ feet, *except those located on the Potrero*, which are 100 feet by 200 feet." "The number of lots for fire purposes is 25, their size being 30 feet by 137½ feet, *except those located on the Potrero*, which are 30 feet by 100 feet."

There is another very singular circumstance connected with this case. Thomas O. Larkin, Abel Stearns, and H. F. Teschmaker, witnesses who testified to the signatures of Jimeno and Micheltorena, and all but one to that of Guerrero to the last forged document, are very much lauded by counsel for appellants in some of their written briefs. One of these witnesses, Abel Stearns, presented the fraudulent Andrade claim, which was rejected by the District Court. Another, H. F. Teschmaker, was one of the claimants for Lup Yomi, rejected by this honorable court for fraud, and is reported in 22 Howard, p. 392, and the other, Thomas O. Larkin, presented the claim for the orchard of Santa Clara, which was rejected for fraud by the district court. See 1 Hoffman's R., 313. I mention these per-

sons and cases for the purpose of showing their peculiar and unfortunate position and connection with fraudulent claims, and for the further purpose of showing that a "fellow feeling makes us wondrous kind." Of course Castro testified to the signatures of Micheltorena, Jimeno, and Guerrero, and such a case as this would be incomplete without the testimony of JOSE MARIA COVARRUBIUS.

After the cause was brought into the district court, Vicente P. Gomez, learning that he was charged with writing the second forgery; on the 28th of April, 1857, appeared before the district judge, in open court, and confessed that he wrote the document at the solicitation of Gliddon, a short time before it was filed in the board, and in order to test his credibility, on a severe cross-examination by claimant's attorney, the grant, or a portion of it, was repeated over, and the witness was requested to write it out, which he did, under the unusual excitement of such a confession. On comparing it with the original, his honor, the district judge, pronounced both written by the same hand. But what did the claimants? Did they denounce the forgery? By no means. As if determined to exhaust the powers of the "fraudulent grant ring," they introduced upon the stand, for the purpose of impeaching poor Gomez, one *Luis Arenas*, one of the pretended grantees of the orchard of Santa Clara, rejected for fraud as aforesaid. Also *Jose Leandro Luco*, one of the parties who presented the famous Ulpinos fraud for 270,000 acres of land, rejected by this Honorable Court for fraud, and is reported in 22 Howard, 454, and *Henry Cambuston*, whose fraudulent claim was rejected by this Court, and is reported in 20 Howard, 63, and also one Lorrain and Jose Santos Berreyesa, one of the main pillars in the Santillan claim, most of whom knew the general reputation of Gomez for truth and veracity from Generals Vallejo and Castro and Gregorio Briones, or their companions. This impeaching testimony was given after the testimony of experts and chemists had been introduced by the United States to show the forgeries.

Never did claimants or their counsel hint, suggest, or admit, that there were *any* forgeries, frauds, or perjuries, in the case up to the time of the passage of the law of Congress in 1858, *making it a high misdemeanor to prosecute or attempt to obtain the confirmation of forged claims.* Up to that time, and for the period of more than six years, everything that had been done, and a great deal was done, was to sustain one or both of these forgeries. And never did claimants or their counsel in any manner aid or assist the United States in ferreting out the villanies and crimes that everywhere abound in this case; but on the contrary, everything that human ingenuity could devise

was attempted to sustain these forged grants. *Claimants never discovered the forgeries until it was a crime not to discover them.** Then, Rip Van Winkle-like, they woke up and commenced telling us that there were forgeries in the case. It had been so long known to everybody else that, like that famous sleeper, traveling in the streets of his own Catskill, they were stared at in amazement and surprize.

In another brief "we discovered and denounced the forgery," say they, and mournfully do they wail that they have been the "victims" of a conspiracy—have been sinned against but have not sinned—that they took the precaution to investigate the genuineness of the forgeries before they were presented, and acted under the advice of counsel. But unfortunately for them, the counsel, Volney E. Howard, under whose advice they acted, was directly interested in the confirmation. (See Throckmorton's testimony, answer to question 3, Transcript, p. 59.) True, the paper was exhibited to several persons for the purpose of enquiring whether the signatures were genuine; among them, Larkin, Stearns, and Teschmaker.

When the second forgery was filed no effort was made by claimants to show anything about it, or its history, except to file *ex parte* affidavits—one by Gliddon, that he found it among Ridley's papers, and gave it to E. L. Beard; another by Beard, that he received it from Gliddon and gave it to Throckmorton; and another by De Zaldo, the then administrator, that he first heard of it two months before. It was vaguely charged that the paper had been abstracted and withheld "by some evil-minded person or persons," and there claimants rested. (On the argument before the Land Commission, that "evil-minded" person was declared to be a "squatter," and terrible were the denunciations against him.) Claimants introduced their Briones, Padilla, and Castro to prove its existence in 1845, but did not attempt with proof to account for it from that time to 1854.

The United States did not thus remain quiet. The law agent *knew* it was a forgery, and he caused Gliddon to be subpœnaed. He disobeyed the writ, and the law agent was compelled to apply for an attachment in order to bring him before the commission. (Transcript, pp. 115, 116.)

Throckmorton, interested as he was, was also placed upon the stand by the United States, for the purpose of finding out what he knew about its history. Throckmorton is a man of great shrewdness and intelligence. He was selected by Beard and his other co-claimants to investigate as to the genuineness of the

*It is due the distinguished counsel now engaged, to state that no one of them on either side of the continent had any connection with the case until long after this time.

paper. Mark with what consummate skill he proceeded. After obtaining the opinions of several, who were also "victims," he at last approached Briones, one of the attesting witnesses to the act of juridical possession. He carefully folded the paper, so as to exhibit only the name of Gregorio Briones, presented it to him, and asked him if that was his signature; and Briones answered in the affirmative. He did not even explain to him the character of the paper. But I will let the witness tell his own story. (See Transcript, p. 61, cross-examination, answers 3 and 4.) "My only wish was to ascertain the *genuineness of the signatures*, and when he pronounced his genuine I had no other object. *I was endeavoring to investigate closely its genuineness. I had no conversation with him, except to ask him if that was his signature.*" Not only this; there were witnesses present. (Answer 7, p. 60.) "Mr. Fisher, the secretary, was present, and a clerk in the office and *a Mr. Richardson.*" What more could a careful man, interested to the extent of ten or twelve thousand dollars in its confirmation, (Answer 17, Transcript, p. 61,) do, who was "endeavoring *closely* to investigate the genuineness of a paper; have witnesses present, among whom should be *a Mr. Richardson*, and then ask this soul-searching question? Thorough and trying as the test was, Briones endured it, and deceived Throckmorton, the shrewdest of all the claimants. Ill-natured persons may suggest that some questions might properly and naturally have been asked as to the *fact and circumstances* of possession, and as to the *time* the paper was signed. To all such we reply, they evidently do not know Throckmorton. His ideas of politeness would not allow him to do so rude an act. True, the whole world knew, and ever since 1846 had known, that scores of documents affecting the title to lands in California had been antedated; but the witness was oblivious and in a peculiar state of mind, which I will allow him to explain in his own language. After testifying that he received the paper from Beard, and that he did not recollect that he had ever told him where or when he got it, question 11 was propounded in the following words:

"When the paper was handed you for inspection, were you interested in the confirmation of the claim. If you were, why did you not ask to ascertain from the person who exhibited it to you when and where he got it, and the particulars relating to it?"

Answer. "Because my curiosity in the matter was absorbed in the importance of discovering so valuable a paper. *The fact of its existence was enough, and I believe that my interest in the document tended rather to the present than its former history.* I believe this to have been my true feelings at the time, and the reason why my attention was not directed to its history."

Comment is unnecessary—the language is too plain to be misunderstood. "*The fact of its existence was enough*" for Throckmorton, as it was for all others interested in the confirmation up to the passage of the penal law of 1858.

How, with what grace, can the claimants now assert that they were the "victims" of a conspiracy? The same tools used by them in proving forged documents to be genuine, and their early existence, were also used to prove inhabitancy, cultivation and possession.

Will it be pretended that Richardson and the others thrust themselves upon claimants and into the case? This is evidently not so, for the first forgery was such a miserable counterfeit that *even* Richardson's conscience could not pronounce it genuine until after months of training and preparation. It would be interesting to us, as it doubtless would be to the Court, if the learned counsel for claimants would inform us *who* victimized them with the *first* forgery; also how it happened to be so long prior to the passage of the act of 1852, and when it was in fact made and, "imposed" upon them "Victims" usually are able to state points like these with great precision. We regret, after the "discovery" they speak of, they did not place *all* the facts concerning the first upon record.

As to the second forgery, we are thankful for the short history which they saw fit to give of it *before* they made the "discovery" which is to be found on page 122 of the Transcript in their *second* amended petition. As it is very short, we give the exact language. In speaking of the document they say, "*It was found by parties interested with your petitioners in the confirmation of the said claim among some other papers in the mission* as petitioners are informed and believe." This declaration has peculiar significance; it was not hastily made, but deliberately, in view of all the facts; the affidavit of Gliddon, that *he* had found the papers, was made May 4, 1854. (Transcript p. 120.) It was filed on the same day and at the same time with the second amended petition, to wit: May 16, 1854. (Transcript, pp. 120, 121, 122.) The first amended petition was filed May 4, or twelve days before the second. (Transcript, pp. 119 120.) Twelve days, consideration of Gliddon's affidavit induced the filing of the new petition. This averment, or first chapter of the history of the paper, possesses additional force and interest because it is in the nature of a joint averment and assertion of a fact, made by all the claimants of record and out of the record, and by the counsel in the case, a deeply interested party, that *the persons who found it were interested in the confirmation.*

We regret that after the "discovery" spoken of the, "victims" did not add another chapter to this history, or at least make up

an appendix, by producing witnesses before the district court who could have detailed *all* the incidents of the imposition, with dates, circumstances, and names. This would have been far better than written denunciation or verbal declamation, and might have relieved it from some suspicions which even the names of "some of the first citizens of California" will fail to remove. But "they now withdraw all forged documents and the evidence by which they were sustained, from the case." We confess that we have a very imperfect idea how this is to be done or can be done. It will be a terrible mutilation of the records of this Court, and will reduce the size of this transcript as transcript never was reduced before, and will leave us in great difficulty as to what is to be done with the testimony of the United States, which disproves the forgeries and refutes the perjuries. Though there will be no dispute as to what are the forgeries, how will it be as to the perjuries? Who is to determine which are perjuries? There may be some difference of opinion on this point, notwithstanding counsel say "the true is easily separated from the false." If this is so easy a matter, why did not the counsel *specify* the false. It makes a vast difference whether they withdraw what they conceive to be false or what we claim and have attempted to show is false. What is to become of appellantes original and amended petitions? The original sets up one forgery, the first amended petition both forgeries, and the second amended petition the last forgery.

The fact is, these crimes cannot be withdrawn. They permeate the entire record, and make up and give character to the case. The plague spot is upon it, and vain is the command "Out, damned spot," for this case "will ne'er be clean." Victor Hugo's devil-fish did not, with its pustulous feelers and by its innumerable hideous mouths, closer cling to and draw the body of Gilliatt into itself than do these crimes cling to and draw this case into them; but, unlike Gilliatt, it has no weapon and free arm with which to destroy the monster. Base felonies, like "the winds, come from everywhere and are everywhere" in this case. May we not here with propriety invoke the wholesome maxim of equity's highest tribunals, "that he who seeks equity must do equity," and also that other one, that "he who comes seeking the aid of a court of equity must come with clean hands?"

The case of the United States *vs.* West's heirs, decided by this Court in 22 Howard, 315, is not at all like the present case, as will be seen by the opinion of the Court in case of United States *vs.* Galbraith, 2 Black, 394, in which the West case is commented upon. In doing so Mr. Justice Nelson says: "There is no evidence tending to prove that the alteration took place

while in the hands of West, and taking the admission of the Government, that the original grant was genuine and honest, in connection with the possession and improvements, this Court concurred with the court below in the confirmation of the league and a half." And as the Honorable Justice remarked of the Galbraith case, so it might with equal propriety be said of this case. "The features of that case were strikingly different from the present one. The grant was made to West in 1840. He had been in the possession and occupation of the rancho from 1839 to 1849, when he died. He made extensive improvements in buildings and cultivation; among other improvements a grist-mill and cultivation of 200 acres of grain and vegetables, besides a stock of 200 horses and 2,000 cattle."

Unlike this case, there was an undoubted *grant* of one and a half leagues of land, and the word "one" was altered to "two" by some person, and there was no evidence tending to show that the grantee, his heirs or assigns, had done it, or were privy to it; besides (I speak from recollection of the case; I may be, but think I am not, mistaken) there were no perjuries in the case.

Fraud, forgery, perjury, and subornation of perjury, cannot approach the sacred spots dedicated to the dispensation of that justice that is akin to that which is divine, without being ignominiously expelled therefrom. To such the doors are closed. But modest worth, unfortunate honesty, truth, sincerity, and innocence may penetrate to its most hallowed place, view its most sacred mysteries, and demand the attention of its ministers.

Barren as is this case of equities, and much as I am opposed to confirmation, could the consent of the reverend fathers in charge of the Magdalen Asylum be obtained, the women therein be removed, and the building be secured by additional bolts and bars and divided into cells, and could this Honorable Court, by its solemn judgment, incarcerate therein all those miscreants who are accessories or principals to the crimes of forgery, perjury, and subornation of perjury in this case, I would consent to confirmation of the lot on which it stands; for the place would be better than an ordinary prison, for the reason that it would suggest to the criminals that the former occupants, not fallen, it is true, by many degrees, as low as themselves, had reformed. Their example might inspire even them with the hope that they too might be made clean. It may be objected, and I have seen it suggested in one printed brief, that those I represent have no right here to be heard, because they are not parties to the record. We appear here, as we have hitherto in the other tribunals through which the case has dragged its slimy way, by

permission, because it is a great public question. The cause is entitled Josefa De Haro *vs.* United States, but *pendente lite* claimants have transferred all their interests to the speculators, and the United States, by act of March 8, 1866, transferred all its interests to the people—the city of San Francisco. Counsel opposed represent not the original claimants, but the speculators; we the people and the city of San Francisco. The United States, a just and generous Government, will protect its citizens against fraud and oppression where it is a party litigant. We claim the same right to appear and be heard as do claimants.

And here we close our comments upon this most remarkable case.

H. H. Brown
Of Counsel

IN THE

Supreme Court of the U. S.

DECEMBER TERM, 1866.

JOSEPA DE HARO, et al., Appellants.

vs.

THE UNITED STATES.

Supplemental Argument of Harvey S. Brown.

W. M. STEWART,
Of Counsel.

Joseph L. Pearson, Printer, 511th street.

IN THE

Supreme Court of the United States.

JOSEFA DE HARO et al.,
Appellants,
vs.
THE UNITED STATES.

Reply to the Argument of Harvey S. Brown.

The intemperate and extravagant character of this document, and the reckless statements of facts not in the record, call for a passing notice. It must be a bad cause that requires a violation of all rules of argument, and an utter disregard of the real issues involved. In the former briefs filed by appellants we have presented our case upon the record and the law, without indulging in abuse or intentional misrepresentation of either fact or law. We first presented our title and sufficient evidence of possession prior to 1846, to show a compliance with the conditions of the grant, and then called the attention of the court to the principles of law governing the case.

We again call attention to the witnesses who prove possession by Francisco and Ramon de Haro, prior to their death, in 1846.

Evidence of Possession as Shown by the Record.

HENRY F. TESCHEMACHER, (Record, p. 29.)

[This witness is a man of very high character, and has been mayor of San Francisco, and has held other important offices.]
[Time testimony was taken, March 2d, 1852.]

Q. 4. Do you know anything of the claim or occupation by Francisco or Ramon de Haro of a tract of land known as Potrero de San Francisco?

A. I know nothing except by report, as I know other farms in the country. I have seen their horses on the place; we were in the habit of sending our horses to that place to recruit; permission in such cases was always obtained from Guerrero.

Q. 5. About what year did you see their mares and horses on the land?

A. I saw them there from 1842 up to 1846; by report, this place belonged to the de Haro family; Guerrero was married to one of old de Haro's daughters; Francisco, jr., and Ramon de Haro were never married; the following-named persons are sisters of Francisco and Ramon, now deceased, to wit: Josefa, Rosalia, Natividad; there are others, but I do not know their names; I have known the tract of land called Potrero since the year 1842; two or three years after this I was better acquainted in the country.

THOMAS O. LARKIN, (Record, p. 31.)

[A leading man and pioneer farmer, consul for the United States, &c.]
[March 7th, 1854.]

Question by same. Did you know Francisco and Ramon de Haro, and whether they held or claimed any land in the neighborhood of the Mission Dolores, and if so, what land?

A. I know Francisco, the father, and that he had several sons, and I know, from common report, prior to the occupation of the country by the Americans, that they owned some land near said Mission, but I do not know what lands they were.

MRS. C. S. DE BERNAL, (Record, p. 35.)

[This lady is of one of the oldest Mexican families, and has the respect and confidence not only of her own people, but also of the Americans.]
[March 9th, 1854.]

Question. Were you acquainted with Francisco and Ramon de Haro?

Answer. I was.

Question by same. Do you know of their claiming and occupying any land in this country, and if so, where was it situated?

A. I know of their claiming and occupying a tract of land, being a Potrero situated near the Mission Dolores.

* * * * * * *

Q. Have you ever known said Potrero to be occupied; if so, by whom and in what manner?

A. I have known it to be occupied by Francisco and Ramon de Haro, with cattle and horses, inclosures, a corral, and a small wooden house; it was all enclosed.

Question by the same. About what year did their occupation commence, and how long did it continue?

A. Their occupation commenced about ten or eleven years ago, a little more or less; I cannot remember precisely. It is still occupied by the inclosures still being there.

F. VASQUEZ, (Record, p. 108.)

[A very ignorant witness, who could not write his name, called by the United States. Was willing to help the side that called him, as appears from his whole testimony. Admits the fact of repairing the wall.]

[July 13th, 1854.]

Q. 5. Did you ever know of Francisco de Haro, or the sons of said de Haro, making any improvement on the Potrero property?

A. I never knew of any except that de Haro and myself had a fence put around it to keep the cattle in.

We have not attempted to quote all the testimony in the record tending to establish the possession of the original grantees, but sufficient for our purpose. Teschemacher and Larkin are attacked, but no words of counsel can injure them. Their characters are too well known to be impeached because they lost a case in this or any other court, but the counsel brings that charge against each, and assumes that he has demolished their testimony. These gentlemen need no defence at my hands. Mr. Teschemacher was once mayor of San Francisco, and dis-

charged his duties faithfully, and still retains the confidence and respect of the entire people. Mr. Larkin, during his life, was a leading and enterprising citizen, and his early residence in the country as consul of the United States, and his high character for honesty, gave him a position of influence in the early history of San Francisco which men rarely occupy. Everything he ever uttered he at least believed to be true.

Mrs. Bernal stands uninjured by the attempt to show a conflict between her testimony and Charles V. Stuart, for in such a conflict no one at all acquainted with the parties would have the least fear of the impeachment of the character of Mrs. Bernal for truth and veracity. We shall hereafter have occasion to call attention to this witness, Stuart.

We make no defence for any witness who was ever at any time mixed in the frauds disclosed by this record, or the record in any other California case. We have no use for them or their evidence.

ADVERSE TESTIMONY.

The evidence against possession is mostly by Mexican witnesses, examined through interpreters, who generally disclose limited means of knowledge, and give testimony of a negative character. Francisco Sanchez (pp. 14, 15, 16, 17,) is chiefly relied on by respondents. This witness did not know of the occupation of Francisco and Ramon de Haro, but contended that he must have known all about it, if they had occupied, because he was a brother-in-law of Francisco de Haro, senior. But he also states that he went with Francisco and Ramon de Haro to Monterey, and remained with them several days, when they applied for the grant. Yet this very intimate friend and relative did not know what these young men applied for, whether a grant or something else, nor did he know what was the result of their application—showing most conclusively either that his relationship afforded a very

poor opportunity for knowing the business of the de Haros, or that the witness was unwilling to tell the truth about what he really did know. We submit that his whole testimony shows a manifest bias, and is not entitled to be believed as against positive affirmative evidence.

TORIBIO SAN FERAN, (Record, pp. 89, 90, 91.)

This witness was a native Mexican, eighteen years old in 1844; lived in San Francisco and the Mission since 1840: passed the Potrero "on some few occasions." He saw no occupation by any particular persons, but when asked the question, "How did you know the de Haros claimed the land?" answered, "Because I heard the de Haros, the boys Francisco and Ramon, before their deaths, call it theirs in conversation."

VINCENTE MIRAMONTES, (Record, pp. 105–6.)

[July 13, 1854.

This witness was a Mexican. Says that the Potrero was common to all—a mistake easily made, as it had been common since he was a boy, except the occupation of the de Haros, to which his attention was not probably called, as he states no means of information. He also states that there was no house on the Potrero, which was undoubtedly true, in the sense of a regular habitation.

T. VASQUEZ, (Record, pp. 108–9.)

[July 13, 1854.]

We have already quoted from this witness to show the fact of the repairing of the wall. He in effect admits the occupation, but says that it was by his permission. He evidently wishes to aid the party calling him, (the United States,) and to magnify his own importance. His evidence, as a whole, is in favor of the occupation.

MIGUEL NOE, (Record, pp. 162–63.)

[July 18, 1857.]

This witness was twelve or thirteen years old in 1844, and swears that he had his own cattle on the Potrero between 1844 and 1846, and that he knew nothing of the

de Haros' occupation. Claimant's counsel did not take the trouble to cross-examine him.

The five witnesses last above mentioned were the only persons in the country between 1844 and 1846 who were called to disprove our possession, and we submit that they have not even raised a reasonable doubt on the subject.

The possession of claimants from 1849 to the time of the trial, and up to the present, so far as disclosed by the record.

J. K. Rose, (Record, p. 11.)

[This witness was a leading lawyer of high character, whose word would not be doubted under any circumstances.]
[Time testimony was taken, Dec. 16, 1863.]

Q. 12. Have you ever known the heirs to make any use of the land described in this grant; if yea, what use?

A. Mr. Guerrero and Mr. Andrews appeared to have the care of the property of the de Haro estate, and they occupied the land with cattle and horses belonging to the estate, and occasionally some of their own horses. When I first saw the land it was nearly enclosed by a stone wall, running from Mission creek to an estero on the southern end of the Potrero. This was an old wall, and at that time very much out of repair. As soon as I was appointed administrator I repaired the fence, at an expense of one thousand dollars, by putting up the old wall a portion of the way and completing the remainder with posts and rails or boards. The work was done by Mr. Treat, who was the lessee of the place, and paid for by an allowance on account of rent. I leased him the land immediately after I was appointed administrator, reserving the privilege of putting the cattle and horses on that belonging to the estate, as I might collect them from time to time. The wall and fence above mentioned were on what was understood to be the line of the rancho, separating the land from the Mission grant. The tract is bounded on the north and southwest by Mission creek, on the east by the bay, on the south by an estero or estuary, and on the west by the fence above mentioned.

S. R. THROCKMORTON, (Record, p. 62.)

[This gentleman is one of the most enterprising and respected citizens of San Francisco.]

[April 27, 1844.]

Q. 8. Were there any other circumstances besides these you have mentioned which went to establish your belief in the genuineness of the paper; if yea, state them?

A. None other except the general understanding that the land belonged to the grantees named, (the de Haro family,) and that there was no conflicting title known.

Q. 9. How was the land occupied, and by whom, when you first became acquainted with it?

A. There were some brick-yards on Mission creek in 1852, when I first went on the land; there was a stone wall enclosing the tract and a gateway; the gate was locked; it was in possession of Ramon de Zaldo, who was represented as the administrator of the de Haro estate; on the last side there was also a brick-yard not in operation, and a tent-house belonging to it.

This evidence is not disputed in the record, and must be taken as true.

If these had not been notorious facts a hundred witnesses might have been called to disprove them.

It is quite significant that the administrators of the estate of Francisco de Haro, senior, both Rose and Ramon de Zaldo, retained undisputed possession of the property, with one exception—the intrusion of the Scotchman, which will be hereafter noticed. With our original grant and our continued possession, it would seem that the equities were ours, but the learned counsel for the squatters says that this land was granted to his clients more than ten years ago. The question arises, Who are his clients?

The only witness who gives any satisfactory information on this subject is Charles V. Stuart, who testified on the 3d of July, 1854. At this time he informs us that there were three classes of claims to the property, under some one of which it was expected to get the land, if the de Haro title could be defeated.

First. Pre-emption claims.
Second. Locations under school land warrants.
Third. Sheriffs' sales on judgments against the city of San Francisco.

It appears that these claims only dated back as far as 1852. The claims which Stuart and Thorn "started off" had been abandoned. The reason for this abandonment is not fully given by the witness, but he does tell us (Record, p. 66,) that they were ordered off by persons representing the de Haros; and Thorn, his partner, tells us (R., p. 95,) that "the heirs of Francisco de Haro claimed the Potrero in 1849." The fact that actual possession was given up, and the usual traps set for this land, in case it should slip out of our hands, corroborates fully the testimony of Rose and others, in regard to the possession by the de Haros and their representatives, from the date of the grant to the time of the trial, 1854–5.

The scheme of these honest clients of the counsel comes out so naturally from this witness, and is so like every other effort of these parties, that I will let him tell his own story.

TESTIMONY OF CHARLES V. STUART, CALLED BY THE UNITED STATES, (P. 71.)

Q. You speak of having had a claim in the Potrero in 1849; what was the character of that claim?

A. It was a squatter's claim, which Mr. Isaac N. Thorn and myself started off with a view to improve it.

Q. Do you now claim that, or any other land on said Potrero, by virtue of the right of pre-emption in the public domain; if yea, how much do you claim?

A. There is one claim of about eighteen or twenty acres, in which I purchased a one-third interest last fall or winter, and for which I paid Joseph McMally, the occupant, $1,000. Another claim of one hundred and forty-four acres, adjoining the one first named, on which I hold an undivided quarter interest, which I

obtained from Silas H. Bowman, the present occupant, who claimed it as government land. I transferred to him a claim which I had under a sheriff's title which covered a portion of his land, which has been made out of judgment against the city of San Francisco. I valued my interest at $4,000, for which the said Bowman relinquished to me the said undivided quarter of his claim. I have an indirect claim upon a one-fifth interest in some eighteen acres further north, and adjoining the claim first mentioned in this answer. I held no deed for this last, but have the promise of one from the occupant, who claims it as government land. The old claim of 1850 I have abandoned—the one I started off with Thorn. These are all the claims I have on said Potrero.

[The deposition objected to by claimant's counsel, on the ground of his incompetency, as being interested in the result of this claim.]

(Re-examined by United States law agent.)

Q. Has the land on said Potrero ever been surveyed by the government official survey of the United States, and has any interest accrued to any one by virtue of the pre-emption laws of said government; if yea, to whom and how did it so accrue?

[This question is objected to by claimant's counsel as asking for matters of law. P. L.]

A. I know of no sectionizing of the Potrero under any government survey, nor do I know that it has ever been decided to be government land; until that is so decided, I suppose these occupants, who claim as settlers under the pre-emption laws, can secure no claims as such. The only knowledge I have of any effort having been made to secure a legal title to the Potrero under the pre-emption laws of the United States is that of Mr. Bowman, from whom I purchased the quarter interest. He procured a survey of his claim by the county surveyor in 1852, and filed a plat of that survey in the recorder's office, and one also in the county surveyor's office. I un-

derstand that Mr. Bowman took these steps in order to secure his rights as a pre-emptor of the United States government land.

(Cross-examined by claimant's counsel.)

Q. Do you hold any portion of the claims you have specified under and by virtue of any school warrants of the State of California?

[This first question objected to by United States law agent as not cross-examination. P. L.]

A. I do not. Mr. Bowman was, as I understood, at one time, in connection with others, interested in some such warrants on the Potrero, but before I became interested as a co-claimant with him, he separated himself from all such interest, so far as related to said Potrero.

Q. Do you expect to hold the lands you claim on said Potrero if the claim in this case is rejected?

A. I do. If the land is decided to be government land I expect to hold through Mr. Bowman, as a pre-emptor of the United States; or if it be declared to be pueblo land of San Francisco, I expect to hold under my sheriff's deed; it is within the city limits of San Francisco.

3d July, 1854.

It is sufficient to remark, in regard to these claims, that they had no foundation in law, but this is not all—each had its origin in an attempt to evade the law.

1st. Pre-emption claims were attempted, although the land was expressly reserved by act of Congress from pre-emption and sale, it being claimed under a Mexican grant. The land had not been surveyed, was not valuable for cultivation, would soon become a part of the city of San Francisco, and the pre-emption claims were made by lawyers and speculators who never lived upon the land.

2d. School land warrants were issued by the state for lands donated to it by act of Congress.

The law of Congress did not provide for location of

these warrants on unsurveyed land of the United States, but the state did pass a law to that effect; and the law provided that in case the land did not prove to be public lands, for floating the claim. These warrants were convenient shadows to hold over the lands of Mexican grantees who were becoming exhausted by the strong co-operation of the officers of the United States with land speculators, but they nearly ruined California, and have occupied the attention of Congress and the courts for many years in attempting to adjust the conflicts and difficulties growing out of the laws of California for the disposition of school lands, but locations on unsurveyed lands failed, except such as were confirmed by Congress.

3d. Sales under judgment against the city were all held to be void. This swindle was equal in magnitude and more disgraceful in detail than the Limantour fraud itself.

The Potrero claim was confirmed November 6th, 1855. I ask counsel to show me in this record evidence of bona fide occupation by anybody adverse to the de Haro claim, at the date of this confirmation. The only pretence of occupation is the fact that Stuart calls claimants, under these various sham titles, occupants. He even calls the lawyer Bowman an occupant. But, in order to receive the benefits of the Van Ness ordinance and the act of 1864, they must have been in the bona fide possession in January, 1855. Perhaps I have been a little too fast, as I have come very near forgetting the Scotchman, who appeared upon the premises about the last of 1849 and early in 1850, but disappeared from view long before these proceedings were had before the land commissioners, as this appears to be the only settler who went upon the land as such. The persons who occupied the tents in the winter of 1849–50 left in the spring, as we are told by Mr. Thorn.—(R., p. 95.)

It is true Davis says that before the beginning of the

year 1850 two or three shanties were built, but as the other witness describes them as one shanty and several tents, he probably called the tents shanties.

Between the confirmation of the claim by the land commissioners on the 6th of November, 1855, and the rejection of the same by the district court on the 15th of February, 1862, was a period of nearly ($6\frac{1}{2}$) six and a half years. During this time the supposition was that the title was good, and a large number of sales took place. The property was surveyed and maped out into town lots and some improvements made, but mostly of a temporary character, as the city had not extended across Mission Bay, which separates the potrero from the city. In fact, the land is still a long way from San Francisco proper, separated by a bay some mile or two wide, and it still appears a naked hilly point of land, but it is now evident that some day it will be valuable city property.

It was very natural, after the rejection of the claim by the district court in February, 1862, for efforts to be made to bolster up these old school land locations, pre-emption claims, and sheriff sales, and to adopt all sorts of expedients to acquire possession, so as to set up claims under the Van Ness ordinance and the various acts of Congress. It would not be very strange if the lessees of the claimant should connive at adverse possessions, and even be tempted to set up on their own possession as superior to the title of their landlords. The statement that this property is covered by valuable improvements, or is in any sense a part of the improved portion of San Francisco, I most positively deny.

The improvements are temporary in their character, and are so many standing advertisements of no confidence in the title; and even the owners of these improvements have, as a general rule, bought an undivided interest in this title, and the difficulties attending partition and the fear that they will not be allowed the particular part selected by them, are their only reasons for desiring a

rejection of this claim. I mean, of course, those who do desire such a result, for many, if not a majority, do not. Those who have large adverse claims, or pretended claims, wish to litigate in the state courts the question of prior possession with the claimants, and these are extremely active.

THE SENSATION.

It seemed very strange to me to hear that the city of San Francisco took any interest as between the claimants under the Hart title and those who, unwilling to buy the land, were attempting to acquire it some other way. But respondent's brief explained all. By that brief our claim is made not only to swing round the circle, but to travel at all angles over nearly every part of the city. A half league of land—twenty-one hundred acres—liable to be located anywhere in a great city, was a convenient subject for creating a sensation, and a prolific source of revenue in raising the sinews of war to contest this case. It is said that this case involves three millions, and if extended outside of the wall of the Potrero it will involve fifteen millions worth of property.

We will at once relieve this court from any contest over the extra twelve millions of property outside of our enclosure. We never could and never have claimed anything but the Potrero.

The entry in Jimeno's Index is of the Potrero de San Francisco. The record in the "Toma de Razon" is of a "tract named El Potrero." The grant delivered to the grantees was a "concession of the Potrero." Every witness knew perfectly well what land was meant by the Potrero, and speaks of it as a piece of land surrounded on three sides by water, and the fourth by the old wall originally built by the fathers of the missions. The word Potrero explains everything; its meaning is an enclosed place for domesticated stock. If there is any uncertainty in any other portions of the description, the description in the grant and the final record would control.

The diseño represents the sea on one side, estuaries on two sides, and a line in front of the Mission on the fourth. This is not surrounded by hills, but includes within its boundaries a hilly range, which is marked in the diseño. The translation of the language of the description given in appellants' brief was made by William Cary Jones, who is very high authority on this subject. This translation differs slightly from that given in the record. The translation in the record is, "together with the high land surrounding it." The translation of Jones is, "with the range of hills it surrounds." The latter translation would exactly correspond with the facts. The Potrero does include these hills within its well-known enclosures—the bay, the estuaries and the wall.

There is no difficulty in reconciling and harmonizing every part of the description, but if it were otherwise we would be confined to the property known for many years as the Potrero of San Francisco, and a description by that name alone is quite sufficient.

United States vs. Vaca and Pena, 18 Howard, p. 556, is conclusive upon any question of description which can arise in this case.

The court say, in answer to an objection for want of designation: "It is a sufficient answer to this that the quantity is defined, and the general locality." And the court add: "The claimant had been in *possession* before applying for the grant, under a license from Vallejo. The tract was known by the designation of Los Putos."—(p. 557.) And the court thus dismiss the objection to the confirmation: "It is a condition subsequent which, at the worst, only left the title of the grantee open to be denounced."

In the United States vs. Sutherland, 19 How., 363, the description was merely "a tract of land known by the name of El Cahon, near the Mission of San Diego," and such a designation was held sufficient.

In the United States vs. Pacheco, 22 How., 226, the

question arose only as to quantity, but the court say: "There are two inconsistent and opposing parts of the description, which seem to contradict and neutralize each other; therefore, passing out of the grant, from other circumstances of the case, the court gives four leagues of land, when the grant said, 'the land of which mention is made is two square leagues, a little more or less, as shown by the map.'"

It is unnecessary to multiply authorities on this point, for examination of Mexican archives will disclose few grants equally definite.

The virtuous indignation so freely expressed in the brief of the learned counsel under review makes it our duty to call the attention of the court to the remarkable testimony given on the 3d day of July, 1854, by Frederick P. Tracy, his former partner.—(R., p. 72.)

The situation of Tracy, in giving this testimony, is truly painful. The late F. P. Tracy was a strong man and a good lawyer, and the circumstances must have been very embarrassing which caused him to place himself on record in such an awkward and apparently crooked manner. He states three [redacted] facts when grouped together:

1st. The firm of Brown, Pratt & Tracy (of which both the witness and Harvey S. Brown were members) were attorneys for Charles Brown, guardian for Alonzo de Haro, one of the minor heirs, in the matter of an application to sell the interest of said heir in the Potrero.

2d. He was justice of the peace during a portion of the years 1849–50. In the latter part of December, 1849, or early in January, 1850, Guerrero, who had married one of the daughters of Francisco de Haro, sr., applied to him, as justice of the peace, to commence proceedings to remove the Scotchman off of the Potrero. Guerrero on this occasion exhibited the provisional grant, but the justice of the peace gave his opinion that, it being only

provisional, it was not a title, and an angry conversation ensued, which will be referred to hereafter.

3d. Harvey S. Brown, the partner of Tracy, had an interest with the adverse claimants, or squatters, on the Potrero. This Tracy said Brown had told him. We make no comment upon these facts, but we refer the court to the evasive answers of Tracy in his efforts to conceal them. Whether these complications had any influence upon the opinion of Justice Tracy we will not express an opinion, but we attribute the fraudulent papers in this record to the injurious effects of this erroneous decision; for the decision must be regarded as erroneous in any view of the case. A provisional grant with possession was just as good as any other title for all the purposes of an action against a mere intruder, where prior possession alone is sufficient.

The reason why we attribute the fraudulent papers to this decision is because it threw a cloud on our title, and enabled the band of swindlers, organized for the purpose of manufacturing fraudulent titles, to impose upon the claimants with their forged or anti-dated papers. We shall have occasion to refer to this testimony in connection with another matter, and will only remark here that we do not regard the position of any member of the firm of Brown, Pratt & Tracy such as to entitle him to indulge in great severity of language in regard to these transactions.

If the courts of justice had been open to the claimants, who had possession and genuine record evidence of title, there would have been no occasion for the purchase of manufactured papers.

The counsel says: "We appear here, as we have hitherto in the other tribunals through which the case has dragged its slimy way, by permission, because it is a great public question." This language to be fully appreciated should be read in view of the facts and circumstances which appear in the record.

The counsel argues, on pages 17 and 18 of the brief, that Francisco de Haro, sr., was the author of the forged grant first presented to the land commission, which was written upon the same paper with the original. A brief examination of the record will show that his argument on this point is not sustained by the slightest evidence, but, on the contrary, is flatly contradicted, if Tracy and Davis, both witnesses for the United States, are to be believed. Rose, the administrator, swears that he was administrator from the early part of 1850 to sometime in 1851, and that Francisco de Haro, sr., died some two years before he took out letters of administration, as he was informed. Davis swears (Record, p. 82) that he saw the provisional grant in September or October, 1849, and that the fraudulent document was not then written upon it. Tracy swears (R., p. 73,) that when this provisional grant was exhibited to him, late in December, 1849, or early in January, 1850, the fraudulent grant was not upon it. Both of these occasions were long subsequent to the death of Francisco de Haro, sr., which proves that the fraudulent document was not written during his life-time, and that he could not have been the author. Nor does this conclusion involve the impeachment of the veracity of Rose. He does not pretend to say that he retained possession of the document from September, 1849, (when Guerrero showed it to him,) up to and including the time he was administrator, but he says that the document was shown to him by Guerrero in September, 1849, and that it was in his possession during a portion, if not all the time he was administrator. This testimony is not inconsistent with the possession of the document by Guerrero at the time stated by Tracy. Rose also says that he is not certain that the fraudulent writing was on the document at the time he received it from Guerrero. His testimony, taken together, shows that he had not carefully examined the document when it was first presented to him.

The other fraudulent documents are a portion of the

batch manufactured by Limantour & Co., and bear the Limantour seal. These papers are referred to in case of United States vs. Limantour, decided by Judge Hoffman, in November, 1858, where a full history of this system of Limantour frauds will be found. It appears that they were prepared for sale in the year 1852, partly in Mexico and partly in San Francisco, and that in fact it was reduced to a regular business. Will any one pretend that the community who were the victims of these frauds are guilty of any wrong? Many of the citizens of San Francisco bought the Limantour title and the Bolton and Barron claim, and other fraudulent claims, where the same conflicted with their property, for the purpose of removing the cloud or perfecting the title. These claims were constantly used by the real owners, who had genuine titles, not only in buying and selling, but also in the courts of justice. Will any one pretend that they thereby lost the real title to their property? If every one who had ever held a fraudulent title in San Francisco could be branded as a rogue, there would be few honest men left. We will not prolong the discussion of these frauds, for it has not been, and it cannot be, shown that the minor heirs and the women who inherit this estate had any participation in them, and they are really no part of this case. If any rights ever vested in the de Haros, such rights could not be divested by the fraudulent conduct of third parties.

LEGISLATION OF CONGRESS.

The United States have no interest in this land other than to pass upon the questions involved in this record. The parties in the "bona fide" possession, and those who, having been interrupted by intruders, may recover possession, are entitled to the fee under the ordinance of the city of San Francisco, and two several acts of Congress, so far as the United States are concerned.

In June 20th, 1855, the city relinquished all its rights

to the land within its then limits to the parties in the "bona fide" possession, and such as should recover possession against intruders and trespassers. The limits of the city then included over one-half of this property. Congress, on the 1st day of July, 1864, passed an act confirming this ordinance, with a proviso, "that the relinquishment and grant by this act shall in no manner interfere with or prejudice any 'bona fide' claims of others, whether asserted adversely under rights derived from Spain, Mexico, or the laws of the United States, nor preclude a judicial examination and adjustment thereof."—(15 U. S. Statutes at Large, p. 333, sec. 5.)

In 1866, the city limits having been enlarged, (so as to include the whole of this property,) Congress passed an act granting all the land thus included within such enlarged limits to the city of San Francisco, in trust for the parties in actual "bona fide" possession, with a proviso to the same effect as that above quoted from the laws of 1864.—(Laws of 1865–6, pp. 4, 5.) The effect of these laws is to give the property to the claimants, or to the intruders. Congress has, in effect, confirmed our title, if our claim is "bona fide," or has granted the property to them, if they have a "bona fide" actual possession as against us and our title, and has submitted that question to this court.

If considerations of justice and fair dealing are to have any influence upon the action of this court, independent of strict law, we contend that the equities of the case should be fully considered. In addition to our grant, our possession was prior, actual, and in good faith. All adverse claims have arisen pending this litigation, and all parties making such claims have had actual notice. They have no equities as against our claim, and ought not to be defended by the attorney general. He ought, at least, to stand impartial in this case.

This general power is conceded, and the authority of the leading case of the United States vs. Peralta, (19 Howard, p. 347,) and the numerous decisions on this question are admitted to be settled law, but a distinction is attempted to be drawn between the case at bar and these authorities.

But we contend that the reasons upon which Peralta's case rests are in point. The court say:

"The authenticity of these documents is admitted. The objections urged against their sufficiency to establish the claim are, first, that the officers had no power to make grants of land; and, second, that the northern boundary of the land described does not extend beyond a certain creek or stream, known by the name of San Antonia.

"This would exclude about one-half of the claim.

"We are of the opinion that neither of these objections is supported by the evidence in the case.

"We have frequently decided that the public acts of public officers, purporting to be exercised in an official capacity, and by public authority, shall not be presumed to be usurped, but that a legitimate authority had been previously given, or subsequently ratified.

"To adopt a contrary rule would lead to infinite confusion and uncertainty of titles. The presumption arising from the grant itself makes it prima facie evidence of the power of the officer making it, and throws the burden of proof on the party denying it. The general powers of the governors and other Spanish officers to grant lands within the colonies in full property, and without restriction as to quantity, and in reward for important services, were fully considered by this court in the case of United States vs. Clark, (8 Peters, 436.)

"The appellants, on whom the burden of proof is cast, to show want of authority, have produced no evidence, either documentary or historical, that the Spanish officers, who usually acted as governors of the distant provinces of California, were restricted in their powers, and could not make grants of land.

"The necessity for the exercise of such a power by the

governors, if the crown desired these distant provinces to be settled, is the greater, because of their distance from the source of power.

"By the royal order of August 22d, 1776, the northern and north-western provinces of Mexico were formed into a new and distinct organization, called the Internal Provinces of New Spain. This organization included California.

"It conferred ample powers, civil, military, and political on the commandant general. The archives of the former government also show, that, as early as 1786, the governors of California had authority from the commandant general to make grants, limiting the number of sitios which should be granted. In 1792, California was annexed to the viceroyalty of Mexico, and so continued till the Spanish authority ceased. An attempt to trace the obscure history of the various decrees, orders, and regulations of the Spanish government on this subject, would be tedious and unprofitable.

"It is sufficient for the case that the archives of the Mexican government show that such power has been exercised by the governors under Spain, and continued to be so exercised under Mexico; and that such grants, made by the Spanish officers, have been confirmed and held valid by the Mexican authorities. Sola styles himself political and military governor of California. He continued to exercise the same powers after his adhesion to the Mexican government, under the provisions of the plan of Iguala, and the twelfth section of the treaty of Cordova. The grant in fee, given by Sola, was after the revolution.

"The government of Mexico, since that time, has always respected and confirmed such concessions when any equitable or inchoate right, followed by possession and cultivation, had been conferred by the governors under Spain.

"The case of Arguello (18 How., 540,) was that of a permit by Governor Sola, afterwards confirmed by the Mexican government and by this court.

"The plaintiff in error has not been able to produce anything from historical documents, or the archives of California, tending to show a want of power in the respective officers in this case. On the contrary, the presumption of law is confirmed by both. The order of Mi-

cheltorena, in 1844, for the granting the new title to Peralta, is itself evidence of the usage and custom, and that the acts of Sola and Arguello were considered valid, and that the title, whether equitable or legal, conferred to them, should be respected and confirmed by the government."

It will be observed that the authority of the governors to make grants existed long anterior to the colonization laws of 1824, and the regulations of 1828. But it is contended that by the law of 1824 there was an express prohibition up on a grant of pueblo lands for the purpose of settlement. The second section of the law is as follows:

"The objects of this law are those national lands which are neither private property nor belong to any corporation or pueblo, and can therefore be colonized."

The record in this case shows an official determination of the fact that the land was public.

Hinkley, alcalde of San Francisco, (p. 22, Transcript,) reported that "up to this day (April 13th, 1844,) there are no claimants of any kind, and and it is not occupied by any community or private individuals."

Jimeno reports, April 29, 1844, (p. 22,) that "the Mission of San Francisco no longer holds property of any kind, and consequently the Potrero (or enclosed place for keeping horses) in request is lying unoccupied, as the soliciting parties show by means of a report proceeding from the respective judge."

The governor, "after examining the petition at the head of this proceeding, the preceding reports," &c., reaches his decree, makes the grant, and officially determines the fact that this was public land.

The same determination must have been, and was, made in every case of grants within the four leagues.

Private land and land belonging to a corporation could not be granted.

Either every grant within the present pueblo limits was a violation of law, or these lands did not belong

to the pueblo in such a sense as contemplated by the act of 1824. If the lands within the four leagues of a pueblo could not be granted because such lands belonged to the corporation, then every grant in the pueblo of San Jose was in violation of law and void, for in that case every grant was made by the governor.

The same might be said of a large number of towns in California, where grants were constantly made from the passage of this law until the change of government.

This uniform practice of the Mexican authorities in California, and the vast interests that are dependent upon this heretofore acknowledged power of the governors, require us to look again at the law for what was meant by *belonging* to any corporation. Did it mean that all the lands within the four leagues belonged to the pueblo, or did it mean that such lands as were in the actual use of the corporation for public purposes belong to the pueblo? If the former, the most disastrous results would follow. If the latter, the whole system is easily understood and harmonized.

The fact that in every case there was an inquiry, not as to whether a pueblo existed which included within its boundaries the land petitioned for, but whether the land was private property, or occupied by any corporation. If not private property, and not so occupied by any pueblo, it was uniformly granted. Hence, we conclude that when the law excluded from sale lands *belonging* to any corporation, it meant such lands as were used by, or had been assigned to, such corporation for public purposes.

The attempt to draw a distinction in this case between grants made by the governor alone and those made by him in connection with the departmental assembly, which does not exist in other cases, cannot be successful. The act of 1824 was the law of the supreme government, and if it was a prohibition on the governor, it was equally binding upon the assembly, as much as a law of Congress would be upon a territorial legislature. The construction

contended for by the attorney general must be abandoned, or every grant made by any one of the California governors, in any pueblo, must fail, and the following California authorities must be disregarded: Hart vs. Burnett, 15 Cal., 544; Payne and Dewey vs. Treadwell, 16 Cal., 220; Leese vs. Clark, 18 Cal., 535; and Brown vs. San Francisco; and this court must overrule Singleton vs. Touchard, 1 Black, 342.

If the confirmation of the city title had involved the repudiation of all grants within the four leagues, no man would have been bold enough to have called it a pueblo, for the official acts and solemn adjudications of every officer connected with the government could have been introduced to disprove the existence of any pueblo. Commissioner Thompson, who delivered the opinion as land commissioner, confirming the pueblo claim, fully realized this difficulty, and enters into a labored argument to show that the confirmation of the claim would in no way conflict with grants made within the limits of the pueblo, and cites many authorities to show the right of the government to make grants, notwithstanding the pueblo, and that the pueblo had nothing but such delegated right of disposition and sale of lots as might from time to time be conferred upon its officers. He places his decision not on the ground that the pueblo had any property in the land except a restricted right to use what might be necessary for public purposes, but on the 14th section of the act of March 3d, 1851, which presumed a grant existing in favor of towns in existence on the 7th of July, 1846, as he construed the law.

Commissioner Thompson, in his opinion in the city case, (Record No. 287, page 235,) United States vs. San Francisco, says:

"But whatever may have been the interest which the town had in those lands, or the tenure by which they held them, it is certain that they never had such a right of property in them as would enable them to alienate or dispose of them in any manner.

"Both the right to grant house lots or farm lots, and to dispose of propios by lease or enfitentic rent, was under authority specially delegated by the government for that purpose and revocable at its pleasure. This is proved by all the terms, regulations, and instructions to which we have had access, all of which go to show that the right of property remained in the government, subject to the use of the towns for the purposes, and under the restrictions imposed by the laws and regulations. Authorities might be multiplied almost indefinitely to sustain this position; indeed, we find the principle pervading all the laws of Spain and Mexico on the subject, and uniformly recognized in their application by the authorities whose duty it was to carry them out. Alizondo, in his Practical Universal Forense, Volume 3, page 109, lays it down distinctly in the following passage: 'For,' says he, 'the Kings, the fountain of jurisdictions, are the owners of all the terminos situated in their kingdoms, and as such can donate them, divide or restrict them, or give any new form to the enjoyment thereof, and hence it is that the pueblos cannot alienate their terminos and pastos without precedent, royal license and authority.' Again, Volume 5, page 226, he says, '*There is nothing whatever designated by law as belonging to towns, other than that which, by royal privilege, custom, or contract between man and man, is granted to them, so that although there be assigned to the towns, at the time of their constitution, a territoria and pertinencias, which may be common with all the residents, without each one having the right to use them separately, it is a prerogative reserved to the Princes to divide the terminos of the provinces and towns, assigning to these the use and enjoyment, but the dominion remaining in the sovereigns themselves.*'

"The decree of the Spanish Cortez of the 4th of January, 1813, is, in itself, a recognition of this principle. The object and intent of the law was the distribution and reduction to private property of all the lands previously occupied and used by the towns, and it prescribes minutely the manner in which this shall be done, and treats them throughout the whole act as public or royal lands. *If these lands had been the private property of the pueblos, the Cortez would have had no more right to decree their sale and distribution than they would have had to alienate and dispose of the private property of individuals. But it is evident, from the whole tenor of the decree, that they were regarded as public*

lands, and subject to be disposed of at the pleasure of the sovereign power. This law was probably never carried into effect in Spain; but there can be no doubt that, in common with other decrees of the Cortez, which was revived by the Spanish revolution of 1819, it was in full force in Mexico at the time her independence was established. These decrees have since been repeatedly recognized by Mexico as part of her civil code." * * * (Page 237.) —"From these proceedings it is clear that the lands were regarded as the *property of the nation, and as such subject to the disposition of the territorial authorities according to the law regulating the subject, and this, too, notwithstanding the fact that they were expressly recognized as belonging to the jurisdiction of the ayuntamiento of San Francisco.*" * * * (Page 238.)—"That under the laws of Spain and Mexico no right of property in lands assigned to pueblos or towns were ever vested in those corporations by which they could alienate or dispose of them in any manner; but such assignment only conferred a right to use and occupy them in the manner prescribed by the laws, under the direction of the superior authorities.

"That the right to alienate or dispose of such lands, whenever exercised by the municipal authorities, was by virtue of powers specially delegated to them for that purpose by the king or nation, in the same manner as the authority to dispose of other portions of the public domain was conferred on other functionaries specially charged with the subject."

Judge Field, in delivering the opinion of the circuit court in the same case, after concurring generally in the views of the commissioner and approving his reasoning, adds: (page 392.)

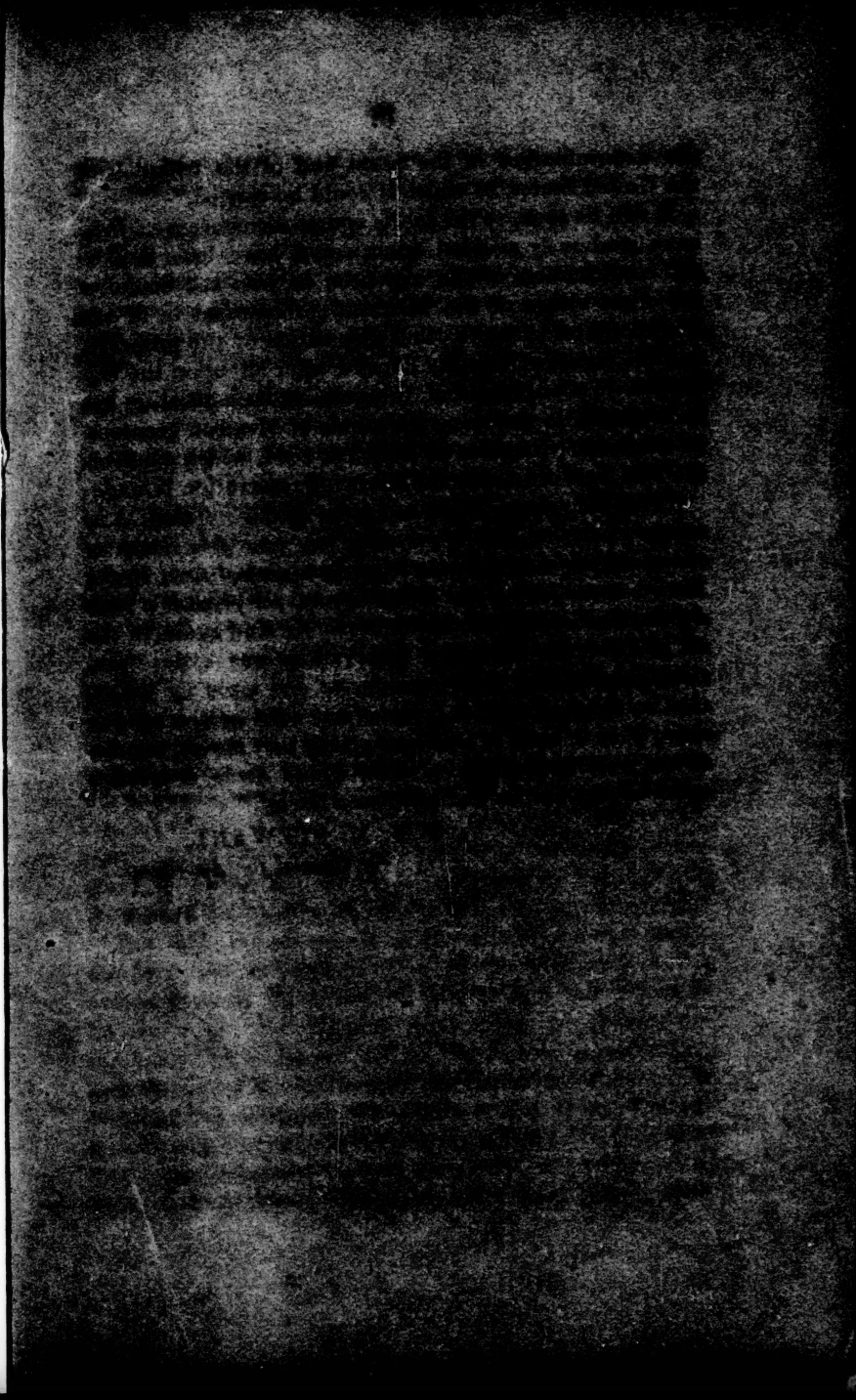
"*It is difficult to determine with precision the exact character of the right or title held by pueblos to the lands assigned to them. The government undoubtedly retained a right to control their use and disposition and to appropriate them to public uses until they had been vested in private proprietorship.*" And in the decree of confirmation, are excepted among other things "such parcels of land as have been by grants from loyal authority vested in private proprietorship, and have been finally confirmed to parties claiming under said

grants by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming thereunder by said tribunals, in proceedings now pending therein for that purpose."

Since the foregoing decision an attempt has been made to take the government reserves upon the same theory now maintained by the attorney general in the case of Grisar vs. McDowell, decided in the circuit court in July last in favor of the government title, and now on appeal to this court. When this case comes on to be heard it is to be hoped that the attorney general will have so modified his views as to be willing to restrict the city title within the terms of the confirmation and preserve the government reservations. Judge Field, in his opinion in this case, (No. 367,) page 22, says: "There is another view of the title or interest of the pueblo to her municipal lands which leads to the same conclusion. That title or interest whatever it may have been, was an imperfect one; it was, in fact, only a restricted and qualified right to alienate portion of the land in lots for building or cultivation, and to use the residue for commons, as pasture lands, or as a source of revenue, or other public purposes, subject, however, in all particulars, to the control of the government of the country. Further action of that government was therefore necessary before absolute ownership could be affirmed in the pueblo. And since the change of jurisdiction, this imperfect right of the city, the successor of the pueblo, to her lands, required recognition and action of the new government before it could be turned into an indefeasible estate as known to our laws. The lands, too, had never been designated and measured off by the former government, and remained in this respect undefined upon the acquisition of the country. The claim of the city had therefore to undergo judicial investigation before the board of land commissioners, created under the act of March 3, 1851, and to depend for its validity and extent upon

the determination of the board and of the tribunals of the United States, to which it could be carried."

It will be seen, so far as the courts are concerned, they have studiously avoided what would have been fatal to the confirmation of the city title, to wit: the denial of the right either of the Mexican government or of the United States to make other disposition of the property, and the rights of the city depend after all upon the legislation of Congress, and Congress in its legislation has been careful in reserving the rights of Mexican grantees. In the act of Congress of July 1st, 1864, which confirms the Van Ness ordinance the following reservation is made:

"*That the relinquishment and grant by this act shall, in no manner, interfere with or prejudice any bona fide claims of others, whether asserted adversely, rights derived from Spain, Mexico, or the laws of the United States, nor preclude a judicial examination and adjustment thereof.*" And again, in the act of 1866, the following reservations was made: "*provided, however, that the relinquishment and grant by this act shall not interfere with, or prejudice any valid adverse right or claim, if such exist, to said land or any part thereof, whether derived from Spain, Mexico, or the United States, or preclude a judicial examination and adjustment thereof.*"

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